

# Agenda

## Item #2



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members and Counsel

From: Jonathan Wayne

Date: March 25, 2008

Re: Carl Lindemann's Requests for an Investigation of the Maine Heritage Policy Center

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In preparation for the March 31, 2008 meeting, this memo is to provide you with background information on Carl Lindemann's requests for investigations regarding the Maine Heritage Policy Center (MHPC).

**Mr. Lindemann's Two Requests for Investigations**

*First Request*

Carl Lindemann filed his first request for an investigation with the Commission on October 19, 2006, arguing that the Maine Heritage Policy Center (MHPC) qualified as a political action committee (PAC). On December 20, 2006, the Commission determined that the MHPC was not a PAC because it did not have as its major purpose advocating for the Taxpayer Bill of Rights (TABOR) ballot initiative. On January 19, 2007, Mr. Lindemann's attorney initiated a Rule 80C proceeding in the Maine Superior Court requesting review of the Commission's determination.

In a Decision and Order dated February 26, 2008, the Superior Court dismissed the petition because Mr. Lindemann did not have standing to challenge the Commission's December 20, 2006 determination. The Decision and Order did not make any judgment on the merits of the Commission's December 20, 2006 determination that the MHPC did not qualify as a PAC. Mr. Lindemann has appealed the Superior Court's dismissal to the Maine Supreme Judicial Court.

*Second Request*

Also on December 20, 2006, the Commission determined that the MHPC was required to file a financial report under 21-A M.R.S.A. § 1056-B regarding financial activity in support of TABOR. The MHPC filed the report on January 22, 2007. On March 5, 2007, Mr. Lindemann requested that the Commission investigate whether the § 1056-B report was accurate and complete. His request contends that the MHPC under-reported the

contributions it received related to TABOR and under-reported its expenditures on staff time used to promote TABOR.

The MHPC filed a response on March 30, 2007 through its attorney, Dan Billings. The MHPC argued that if the Commission believed Mr. Lindemann's theories are worthy of consideration, the Commission should defer taking any action until the Superior Court completed its consideration of Mr. Lindemann's appeal. Mr. Lindemann submitted three additional sets of materials in April and May 2007.

At a meeting on May 14, 2007, the Commission voted 2-1 to postpone consideration of Mr. Lindemann's March 5, 2007 request until after the Maine Superior Court decided on his Rule 80C proceeding. I have attached the minutes for that portion of the meeting.

### **Requests by Mr. Lindemann and the Maine Heritage Policy Center**

After the Superior Court's dismissal of the Mr. Lindemann's petition for review, I informed Dan Billings and Carl Lindemann that I intended to schedule Mr. Lindemann's second request for discussion at your March 31, 2008 meeting and I invited them to submit any additional information that they wished. Mr. Lindemann made three submissions on March 18, March 21, and March 25.

In his March 18 letter, Mr. Lindemann requests that you determine by formal vote whether the Commission is the appropriate venue for his March 5, 2007 request because of an alleged conflict of interest. He asks that if the Commission decides that it is the correct venue to consider his request, the Commission should receive testimony under oath.

In his March 21, 2008 letter, Dan Billings requests that Mr. Lindemann's March 5, 2007 request remain tabled until the courts complete their consideration of Mr. Lindemann's first request.

### **Conflict of Interest Issue Raised by Mr. Lindemann**

Mr. Lindemann raises the issue of whether the Commission is the correct venue to consider his March 5, 2007 request for an investigation. He refers to the request as a "complaint about a fellow Commissioner [Jean Ginn Marvin]." In fact, my quick review of his March 5, 2007 request (three pages plus 27 pages of attachments) revealed only three sentences in which Ms. Ginn Marvin is mentioned. The request is overwhelmingly a complaint about the reporting by the MHPC.

After conferring with the Commission's Counsel, Phyllis Gardiner, the Commission staff suggests that if Mr. Lindemann believes current Commission members are required to recuse themselves from considering his March 5, 2007 request due to a conflict of interest, he should identify those members he believes are conflicted, and state the reasons for the conflict.

The Commission's Counsel and I believe that the Commission is the only department of Maine state government that has jurisdiction to conduct the investigation requested by Mr. Lindemann on March 5, 2007.

### **Options for the Commission**

The Commission staff sees two options for the Commission at this time:

- (1) *Defer for further action by Maine courts.* Because the Maine Superior Court did not rule on the merits of Mr. Lindemann's first request, the Commission may wish to defer taking any action on Mr. Lindemann's second request until after the Maine courts have reached a decision on Mr. Lindemann's first request.
- (2) *Decide whether to conduct an investigation requested by Mr. Lindemann on March 5, 2007.* The Commission could decide whether to conduct an investigation on Mr. Lindemann's second request for an investigation. If so, the Commission staff suggests clarifying what the scope of the investigation would be, whether the Commission wishes to hold a public hearing, or wishes to direct the staff to request documents or information.

### **Attached Materials**

I have attached:

- 3/5/07 Request for investigation by Mr. Lindemann
- 3/30/07 Response by MHPC
- 4/3/07 Supplementary materials by Mr. Lindemann
- 5/9/07 Supplementary materials by Mr. Lindemann
- 5/9/07 Memo to Commission by staff **[without attachments]**
- 5/11/07 Supplementary materials by Mr. Lindemann
- 5/14/07 Minutes of meeting relating to MHPC matter
- 2/26/08 Decision and Order by Superior Court
- 3/18/08 Additional Letter by Mr. Lindemann
- 3/21/08 Response by MHPC
- 3/21/08 Cover page of submission by Mr. Lindemann (full materials in separate addendum)
- 3/25/08 Supplemental materials by Mr. Lindemann

# Carl Lindemann

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Portland, Maine 04112

Phone 207-774-1936  
Email Carl@cyberscene.com

March 5, 2007

## **BY ELECTRONIC AND OVERNIGHT MAIL**

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333

Dear Executive Director Wayne:

Pursuant to 21-A M.R.S.A. § 1003(2), I hereby request an immediate investigation by the Maine Commission on Governmental Ethics & Election Practices into whether the §1056-B filing made by Maine Heritage Policy Center ("MHPC") on January 22 is accurate and complete. Based on all the evidence available to those outside the organization itself, the disclosure of staff time, contributions, and in-kind donations contained in this filing is factually inaccurate and incomplete. The evidence upon which this complaint is based consists not only of MHPC's active promotion of TABOR in the period before the 2006 TABOR election, but MHPC's utter lack of credibility as demonstrated by the material false statements made to the Commission and its staff in the last three months of 2006. Complicating this matter is Commissioner Jean Ginn Marvin's role as treasurer for MHPC. The treasurer has a fiduciary responsibility to see to it that the organization's §1056-B filing is "true, correct and complete". As such, the review necessary to fulfill the Commission's statutory duty is, of necessity, a review of her conduct.

This matter should be of special interest given the extraordinary measure taken by Executive Director Wayne in his March 1 memo *RE: Complaint Against Democracy Maine*. On his own initiative, he raises questions about whether Democracy Maine's §1056-B is complete and his action is separate from any formal complaint made against that organization. He is prompted to do this because of the "recent attention over the sufficiency of §1056-B reporting". He states the need for this special examination because that organization reported spending more funds on a ballot initiative than it received. Here, MHPC's reported expenditures on the same ballot initiative exceed reported contributions by over a factor of thirty. Also, there is a similar preponderance of evidence pointing to likely funders who would have an interest in avoiding disclosure. If Executive Director Wayne is appropriate raising such a matter on his own initiative, then bringing this parallel case forward here through standard procedures is not only appropriate but also necessary.

There are additional motives for MHPC's incomplete filing. Because this is a highly visible case where these disclosures would likely undergo close scrutiny, it is improbable that this inaccurate and incomplete filing is the result of carelessness or misunderstanding. Concealing contributors, as mentioned above, is one very plausible motive of concern to the Commission. But there is another compelling motivation for MHPC to understate expenditures. Unlike Democracy Maine, MHPC is a 501(c)(3) public charity. Maintaining tax-deductible status for contributions requires stringent limits on such expenditures. A fully accurate and complete §1056-B filing would likely

reveal that it had exceeded those limits. If so, the orchestrated efforts to avoid disclosure followed by this wholly incomplete and inaccurate filing could constitute a conspiracy to commit tax fraud. Addressing such an offense is far beyond the scope of the Commission, but does show motive for the matters of concern here. I have attached hereto for your review the Maine Association of Nonprofits flyer *Federal Lobbying Rules and Regulations for 501(c)(3) Organizations*. Please note that MHPC has never filed an IRS Form 5768 for 501(h) status election, and so is subject to the "insubstantial part test".

I have also attached a detailed analysis of the MHPC's activities in 2006 based upon that organization's public postings on such media as the Internet. Of particular interest is how the MHPC's disclosure of TABOR-related staff time on its 1056-B report is at variance with readily available evidence, as well as the Commission staff's own assessment of the organization level of involvement with the TABOR campaign. In the Commission staff's first memo of October 30, the value of a §1056-B disclosure for MHPC was questioned (*italics added*):

Since the MHPC has claimed that it "has not solicited or received any contributions to influence the outcome of a referendum campaign," it would presumably report no contributions if required to file a §1056-B report. The only reporting by the MHPC in a §1056-B report would then relate to expenditures, presumably mostly for staff time. *Many people who are concerned with the campaign finances of the TABOR initiative are likely already aware that the MHPC is spending a significant amount of staff time on TABOR.* The Commission may conclude that there is little additional public benefit to be gained by requiring disclosure of the monetary value of that staff time.

In retrospect, the staff's expectations take on special significance. First, MHPC's written and oral testimony to the Commission that it "has not solicited or received any contributions to influence the outcome of a referendum campaign" has since been shown to be demonstrably false. Second, the staff's acknowledgement "that the MHPC is spending a significant amount of staff time on TABOR" seems at odds with a self-disclosure that claims only 8% of its staff time was devoted to such efforts.

In addition, the reporting of contributions appears to run counter to the guidelines provided for MHPC. These are specific about what contributions should and should not be reported:

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question...

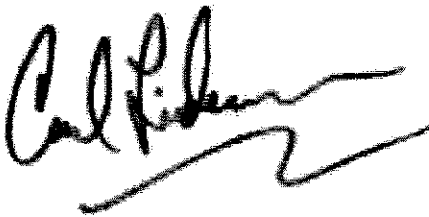
MHPC's written testimony dated December 4 included a single solicitation letter that, it was claimed, did not go out till after voting had taken place despite the document's October 18 date. After the December 20 Commission meeting, an additional fundraising letter dated August 2 surfaced and was distributed by Executive Director Wayne (see attached). While this references MHPC's "Summer Annual Fund Drive", nearly two-thirds of the text refers specifically to the organizations efforts to promote the passage of TABOR. Under the staff guidelines, this would require that every response to this be included in the §1056-B report. In fact, two of the four donations reported were received in August following this solicitation. Were these the only

responses to MHPC's "Summer Annual Fund Drive" solicitation? That assertion is highly unlikely and so is sufficient to warrant further investigation.

Moreover, Assistant Attorney General Gardiner's questioning of MHPC President Bill Becker on December 20 revealed that there may be additional solicitations for TABOR that are, as yet, undisclosed, along with the contributions they elicited. MHPC attorney Daniel Billings stated in his December 4 written testimony that there were no such solicitations whatsoever. That one has surfaced since and others may exist is troubling and points to another anomaly - the exceptionally small disclosure of contributions. As that attached analysis indicates, the \$975 in total contributions MHPC reported represents 0.79% of a projected budget increase of \$124,000 over the previous year. There is little doubt that this 33% growth was fueled by donations resulting from the visibility enjoyed by MHPC for its prominent role in the TABOR campaign. Despite its high visibility in promoting the passage of TABOR, it is simply not credible that this highly publicized work earned the negligible public support in terms of contributions reported by MHPC in its most recent filing.

These questions and others raised by them, taken in the context of previous doubts about the veracity of MHPC's statements, should be sufficient to trigger a full, proper investigation to gather the information needed to verify that MHPC's §1056-B filing is accurate and complete. If it should be found to be inaccurate and/or incomplete as the result of the willful or knowing actions or omissions of MHPC or any of its officers, then appropriate sanctions should be assessed against MHPC.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl P. Lavin", with a stylized flourish at the end.

cc: w/encl.    P. Lavin  
                  M. Demeritt  
                  P. Gardiner

## **ANALYSIS OF MAINE HERITAGE POLICY CENTER'S 1056B REPORT Press Releases, Time Study Indicates Underreporting and Omissions**

On January 22, 2007, Maine Heritage Policy Center (MHPC) released a Form §1056-B campaign report on activities related to promoting the passage of the ballot issue known as the Taxpayer Bill of Rights (TABOR) as ordered by the Maine Commission on Governmental Ethics and Election Practices on December 22, 2006. An analysis of the group's self-report includes these major finding:

- Despite being MHPC's major purpose in the 2006 political cycle, reported TABOR efforts account for only 8% of total staff/contracted time\*.
- TABOR-related expenditures disclosed accounted for only 12.4% of MHPC's projected budget.
- Reported donations relating to TABOR account for less than 1% of a projected 33% budget growth in 2006.
- The Executive Director invested less than 20% of his time promoting TABOR
- The Director of Communications spent less than 4% of his time on TABOR while 60% of the press releases he wrote related to the ballot initiative.
- The Health Reform Initiatives Director\* reassigned to the TABOR campaign spent only 4% of his time on it while press releases for health-related activities dropped over 75%.

### **Methodology Accepted by Commission & MHPC**

This analysis of MHPC's form §1056-B report is based on the same methodology used in the December 20, 2006 presentation to the Commission demonstrating that MHPC'S TABOR campaign constituted the organization's major purpose during the 2006 election cycle. It relies on MHPC's published press releases and other public information including testimony made to the Commission by MHPC. When this previous study was presented, neither MHPC nor the Commissioners or staff questioned either the method or the findings.

### **MHPC Media Output May-November, 2006**

The new analysis examines the thirty press releases published over the reporting period from May 5 through November 7, 2006. These address MHPC's week-to-week interests and so provide an indication as to the relative output of the organization's efforts in its different areas of interest. This same kind of media analysis technique is typically used to determine the "mix" of content in broadcast programming or print media, and readily adapts to reveal the level of MHPC's engagement in promoting the passage of TABOR.

\*Tarren Bragdon is listed as a staff member on MHPC's Web site, but is reported as being a contract employee in the Form 1056B report.



MHPC's mission statement indicates that the organization's efforts are divided between three primary areas of concern: economy/taxation, education and health care. Sorting the releases into these basic categories, education was non-existent during the TABOR campaign. Administrative and organizational announcements (eg. new hires, speakers for fundraiser events, etc.) make up "Other". TABOR releases are broken down into two categories – those that mention the initiative explicitly by name, and those that provided talking points for pro-TABOR presentations and appearances (eg. "Report: Maine and Louisiana the Only States to see 2005 Economic Decline").

Healthcare:	3 = 10%
Other:	4 = 13.3%
Economy/Taxation:	5 = 16.7%
TABOR Related:	7 = 23.3%
TABOR Explicit:	11=36.7%
<b>TOTAL TABOR:</b>	<b>18=60%</b>

It is notable that over the same time frame in 2005, healthcare accounted for nine of 21 releases - 43% of the total output.

#### **Time Factor Added to Analysis of MHPC Self-Report**

The available staff time was computed over the report period with 10 workdays subtracted for vacations to arrive at a total of 123 workdays. With six MHPC staff members listed on the organization's Web site, this adds up to 738 workdays. Figuring an eight-hour workday yields a possible 5,904 total hours available in the report period. MHPC reported 435 hours of staff time plus 40 hours of contract time spent for promoting the passage of TABOR – only 8% of the total.

The total TABOR expenditures reported came to \$30,962.19. This is out of a total projected annual budget of \$500,000.00\* that is then pro rated to \$250,000 for the six-month report period. This accounts for just 12.4% despite the fact that this budget projection represents a 33% increase over the \$375,965.00 in expenditures reported in MHPC's 2005 Form 990 Tax Return.

MHPC Director of Communications Jason Fortin claims only 35 hours were devoted to TABOR "press activities" though fully 60% of the press releases he wrote in this time frame were TABOR-related.

Director of Health Reform Initiatives Tarren Bragdon only claims 40 hours at speaking events (no travel time to and from events is reported as with Becker and staff economist Scott Moody), just 4% of full-time work. At the same time, healthcare-related press release output dropped drastically. Over the same period in 2005, healthcare accounted for the greatest number of releases, some nine out of 21 or 43%. Healthcare releases were literally decimated apparently as the organization's assets – including Bragdon - were reallocated and reassigned to the TABOR effort. In the report's time frame, only three healthcare releases were issued – just 10% of the total. Still, MHPC's self-report shows only a minor involvement by Bragdon "spent at public speaking events".

\* As reported in Marian McCue's 10/26/06 report published in *The Forecaster*.

### **Added Information on Funding Raises Questions**

Beyond the underreporting of staff/contract time spent on promoting the passage of the ballot initiative, funding disclosures, too, are implausible. MHPC reported the same four contributions previously admitted in testimony to the Commission. The \$975 in total contributions represents 0.79% of a projected budget increase of \$124,000 over 2005\*. Though this 33% growth was likely fueled by donations resulting from the visibility enjoyed by MHPC for its TABOR promotions, there is no indication of that. Despite its high visibility for promoting the passage of TABOR, this signature work earned negligible financial support according to this disclosure.

This self-disclosure is also problematic in that it supposedly is made in accordance with the Commission staff's §1056-B guidelines of December 27, 2006 created for MHPC. The guidelines are specific in what contributions should and should not be reported. Of particular interest here is:

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question...

MHPC's written testimony dated December 4, 2006 included a single solicitation letter that, it was claimed, did not go out till after voting had taken place despite the document's October 18 date. After the December 20 Commission meeting, an additional fundraising letter dated August 2 surfaced and was distributed by Executive Director Wayne on December 21. While this references MHPC's "Summer Annual Fund Drive", nearly 2/3rds of the text refers specifically to the organization's efforts to promote the passage of TABOR. Under the staff guidelines, this would require that every response to this be included in the §1056-B report. In fact, two of the four donations reported were received in August following this solicitation. It seems unlikely, however, that these were the only responses to it. Also, Assistant Attorney General Gardiner's questioning of Bill Becker on December 20 revealed that there may be additional solicitations for TABOR that are, as yet, undisclosed along with the funds generated from them.

### **No In-Kind Contributions/Expenditures**

Perhaps the most glaring omission of MHPC's underreport is the complete absence of any in-kind contributions and/or expenditures whatsoever. The legal proponent Political Action Committee for the ballot initiative is not listed as receiving any item or service valued at over \$100 despite being the direct beneficiary of MHPC's full-service public relations campaign. The report does not reflect the hand-in-glove relationship that existed. Roy Lenardson simultaneously held leadership roles in both organizations. But according to this self-report, there was no significant overlap or contribution made despite a sharing the same major purpose.

### **Dates Connect the Dots**

The dates assigned to contributions in the §1056-B filing further demonstrate that MHPC made material false statements to the Commission about accepting TABOR donations. MHPC had accepted money earmarked for TABOR both before it specifically and emphatically denied that it had done so in its testimony to the Commission on October 31. Then, only days after the

Commission clearly and specifically defined the acceptable boundaries, it accepted at least one other TABOR donation.

Pinning down the dates of the contributions also establishes a chronology for the composition of the "thank you" form letter. MHPC attorney Dan Billings testified in his December 4 response to direct written questions from the Commission staff that what appears to be a "thank you" form letter sent on November 6 was not a form letter at all. But MHPC Executive Director Bill Becker testified on December 20<sup>th</sup> that "three (of the other TABOR donors) got the same letter". Apparently, the form letter had been composed at least as far back as mid-August, presumably in anticipation of significant TABOR donations in response to the "Summer Annual Fund Drive" solicitation. Also, a later fund raising solicitation dated October 18 appears to have been based on this form letter. Given this chronology, Billings' testimony on December 20 that this document is the result of "the danger of 'cut & paste' in the computer age" is not credible.

### **Conclusion:**

MHPC's Bill Becker signed off in lieu of MHPC Treasurer Jean Ginn Marvin on the January 22 filing to certify that "the information in this report is true, correct and complete". However, the information does not match the organization's prominence in promoting the passage of TABOR in the report period. In the Commission staff's first memo of October 30, the value of a §1056-B disclosure for MHPC was questioned (*italics added*):

Since the MHPC has claimed that it "has not solicited or received any contributions to influence the outcome of a referendum campaign," it would presumably report no contributions if required to file a §1056-B report. The only reporting by the MHPC in a §1056-B report would then relate to expenditures, presumably mostly for staff time.

***Many people who are concerned with the campaign finances of the TABOR initiative are likely already aware that the MHPC is spending a significant amount of staff time on TABOR.*** The Commission may conclude that there is little additional public benefit to be gained by requiring disclosure of the monetary value of that staff time.

In retrospect, the staff's expectations take on special significance. First, MHPC's written and oral testimony to the Commission that it "has not solicited or received any contributions to influence the outcome of a referendum campaign" has since been shown to be demonstrably false. Second, the staff's acknowledgement "that the MHPC is spending a significant amount of staff time on TABOR" seems at odds with this self-disclosure that claims only 8% of its staff time was devoted to such efforts.

MHPC's 1056B filing demonstrates the inadequacy of taking the organization at its word in the wake of the material false statements already made in testimony to the Commission. It is appropriate that a full, formal investigation should be conducted to ascertain "true, correct and complete" information on MHPC's TABOR activities.

-END-

\* Based on Marian McCue's 10/26/06 report published in *The Forecaster* and MHPC's 2005 Form 990.

Subject: For Your Information - MHPC Fundraising Letter  
Date: Thu, 21 Dec 2006 15:59:43 -0500  
X-MS-Has-Attach: yes  
X-MS-TNEF-Correlator:  
Thread-Topic: For Your Information - MHPC Fundraising Letter  
Thread-Index: Aca2cuLemv9wfnAMQASTEfjeCz9wJxusSeCwAAeWMDA=  
From: "Wayne, Jonathan" <Jonathan.Wayne@maine.gov>  
To: <Dib9@aol.com>  
Cc: "John Branson" <jbranson@bransonlawoffice.com>,  
"John Branson" <jbranson@bransonlawoffice.com>,  
"Carl Lindemann" <carl@cyberscene.com>,  
<jcrasnick@democracymaine.org>,  
<mecep@mecep.org>,  
"Lavin, Paul" <Paul.Lavin@maine.gov>,  
"Gardiner, Phyllis" <Phyllis.Gardiner@maine.gov>  
X-OriginalArrivalTime: 21 Dec 2006 20:59:44.0313 (UTC) FILETIME=[F0E7A290:01C72542]  
X-Nonspam: Whitelist  
X-NAS-Language: English  
X-NAS-Bayes: #0: 0; #1: 1  
X-NAS-Classification: 0  
X-NAS-MessageID: 12  
X-NAS-Validation: {05CC28F7-969D-4640-898B-33B21AA18D71}

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**From:** Kit St John [mailto:mecep@mecep.org]  
**Sent:** Thursday, December 21, 2006 2:40 PM  
**To:** Lavin, Paul; Wayne, Jonathan  
**Subject:** RE: Give a Gift to MHPC Today

Dear Paul and Jonathan,

At yesterday's hearing Dan Billings offered a copy of a MECEP solicitation that explicitly asked for support of our work against TABOR. (I naturally don't know exactly what he was referring to, since he did not provide me with a copy of the letter he offered, but I attach a copy of the only one we sent of this nature.) We have tracked and reported the contributions we received as a result of that mailing on our 1056B reports. I attach our internal spreadsheet which backs up our 1056B. Dan Billings' summary appeared to have different numbers than we reported.

In furtherance of our interest that there be a set of clear standards applied to all engaged in the effort to pass or defeat a ballot initiative, we submit the following email (below) I received from Bill Becker in August soliciting from us support in which five out of ten paragraphs describe their "top priority" to "help us educate Maine people about the opportunity that could be found through a reasonable and effective measure," following their description of TABOR.

I would expect that MHPC should likewise track and report on contributions they received as a result of this mailing. I wonder how many other mailings or emailings they sent out, since they testified that they had not solicited at all specifically regarding their work on TABOR. The words of this email as an example certainly would be the sort of wording that we have assumed required reporting of resulting contributions. We look forward to further guidance from the Commission regarding what constitutes contributions "for the purpose of ... influencing" a ballot initiative. If the Commission were persuaded that there was some meaningful distinction that would require reporting of contributions resulting from our letter and not those resulting from theirs, we naturally would like to be informed of what that distinction is.

Thanks for your ongoing attention to these issues. Best wishes, Kit  
Christopher St. John  
Executive Director

Maine Center for Economic Policy  
124 Sewall St.  
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[www.mecep.org](http://www.mecep.org)

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**From:** [wbecker@mainepolicy.org](mailto:wbecker@mainepolicy.org) [mailto:[wbecker@mainepolicy.org](mailto:wbecker@mainepolicy.org)]

**Sent:** Wednesday, August 02, 2006 3:33 PM

**To:** Kit St John

**Subject:** Give a Gift to MHPC Today



August 2, 2006

Dear Friend,

What an exciting and busy time for our State. 2006 promises to be an important transitional year for the state's economy, and The Maine Heritage Policy Center (MHPC) is working every day throughout the summer to ensure future economic hope and opportunity for all Maine people.

For nearly four years, MHPC has been able to provide research and analysis on fiscal, health care, and education issues - thanks to the support of so many Maine people.

Your ongoing support has been tremendously beneficial, and is needed today more than ever as we move forward. Will you please consider a gift to our Summer Annual Fund Drive today?

This year, the Taxpayer Bill of Rights is obviously one of our top priorities. MHPC wrote the language for this bill nearly two years ago, and we have spent the last 18 months informing Maine people about the need for such a responsible and effective measure.

The Taxpayer Bill of Rights:

- Establishes annual growth targets for state and local government spending, tied to the growth in the economy
- Allows for majority voter approval for exceeding those growth targets
- Allows for majority voter approval for most tax or fee increases
- Encourages government to lower tax rates in order to match tax revenue with government spending
- Rebates money to taxpayers if government revenue exceeds voter-approved spending
- Creates budget stabilization funds at both the state and local level

The Taxpayer Bill of Rights is a reasonable and effective way for Maine to begin repairing its lagging economy. It paves the way for lower taxes and a more favorable business climate, attracting new jobs, strengthening the economy and increasing incomes.

The net result will be to expand the economic pie - securing existing jobs, while keeping young people, families, and retirees in Maine. It will also create an environment where fewer people will need to rely on government assistance programs, thus relieving at least some of the pressure on state and local government. It is, in short, smart growth for our public and private sectors.

Now more than ever, your support is needed to help us educate Maine people about the opportunity that could be found through a reasonable and effective measure. Unfortunately, there are those who are actively misleading the public and distorting the facts.

However, thanks to your support and generosity, we will continue to provide truthful and credible analysis, information, and commentary about Maine's competitive position and how we can improve it. It's great when the facts are on our side!

Please consider a gift today to support the important work of The Maine Heritage Policy Center.

You can give a gift in support of MHPC today by clicking here to make a secure donation online through our website.

Or, mail your contribution to: The Maine Heritage Policy Center; P.O. Box 7829; Portland, Maine 04112.

Thank you. We are truly grateful for your consideration and for your ongoing support.

Sincerely,



Bill Becker  
President & CEO  
The Maine Heritage Policy Center



06 TABOR revenue.xls



TABOR ask.doc

## Federal Lobbying Rules and Regulations for 501(c)(3) Organizations

*Part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.*

### Purpose

- To provide a summary of the federal laws that define and regulate nonprofit advocacy efforts
- To explain prohibited electioneering activities
- To encourage nonprofits to legally and effectively advocate for their missions

### Lobbying

With the 1976 Lobby Law and the IRS Regulations set forth in 1990, Congress made it clear that influencing legislation is an appropriate and legitimate activity for charitable organizations.

Your organization must choose one of two standards by which your compliance with the Internal Revenue Code will be measured. These standards apply to lobbying activities with federal officials. You should also consult your state's laws.

#### Standard One - Insubstantial Part Test

Organizations that choose not to file Section 501 (h) of the IRS Code are still subject to the IRS guidelines set forth in 1934. Known as the "insubstantial part test," these guidelines require that "no substantial part of a charity's activities consist of carrying on propaganda or otherwise attempting to influence legislation." "Substantial" has never been fully defined. However, the courts have made clear that the definition of lobbying under the "insubstantial part test" is not only related to an expenditure of money. For example, activities conducted by volunteers to influence legislation must be considered lobbying.

#### Standard Two - Expenditure Test

Those charitable organizations that choose the Section 501(h) election must apply the "expenditure test." Under this standard, lobbying only occurs when there is an expenditure of money. It sets forth specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures.

These limits are:

- 20% of the first \$500,000 of exempt purpose expenditures, plus
- 15% of the next \$500,000 of exempt purpose expenditures, plus
- 10% of the next \$500,000 of exempt purpose expenditures, plus
- 5% of the remaining exempt purposes expenditures, up to a total cap of \$1 million.

The organization's grassroots lobbying efforts (described in greater detail below) are limited to 25% of the organization's total lobbying activities as calculated using the formula above. Even if the organization chooses to spend very little on direct lobbying efforts, it may still spend up to 25% of the total limit under the law on grassroots lobbying.

**Example:**

A nonprofit with a \$100,000 budget, that has chosen the 501(h) election, may spend up to \$20,000 on direct and grassroots lobbying combined. Of this \$20,000, no more than \$5,000 can be spent on grassroots lobbying.

It should be noted - churches and their affiliates are not allowed to elect 501(h) status, although they may lobby under the "insubstantial part test".

## **Direct vs. Grassroots Lobbying**

### **Examples of Direct Lobbying**

- Communicating your organization's views on a specific legislative proposal to a legislator, a staff member, or any government employee who may help develop legislation
- Asking a legislator or related staff member to take action that would require legislation
- Asking your organization's members (those who contribute more than a nominal amount of money or time) to lobby for a particular bill
- Attempting to influence the opinion of the general public on referenda or ballot initiatives

### **Examples of Grassroots Lobbying**

- Urging the general public to express a particular view to their legislators about a specific legislative proposal, including simply posting legislators' contact information
- Identifying legislators who are opposed to or undecided on a particular piece of legislation, identifying the audience's legislators, or naming the members on a committee that will vote on a piece of legislation

## **Is it Advocacy or Lobbying?**

The following examples are activities that are NOT considered lobbying by the IRS:

- An effort to influence an administrative agency (such as, federal and state agencies and local school and zoning boards) to change its policies, rules or regulations
- A general policy position (such as "government has a role in low-income housing"), given that the position does not speak to specific legislation
- Testimony before a legislative committee when your organization has received a written request from the committee to appear
- Nonpartisan analyses, which need not be neutral or objective, that present facts fully and fairly, are widely available and do not include a call to action (such as, request the reader contact their legislator)

*Note: If these materials are used later in a lobbying effort, the cost of preparing these materials must be counted as a lobbying expense.*

- Responses to written requests for information or technical assistance from legislators
- Discussion with government officials concerning legislation that directly impacts the organizations (such as its existence, powers, duties, tax-exempt status, or right to receive



tax-deductible contributions). However, calling for programs or policies in your organization's field (such as the environment or healthcare, etc.) is considered lobbying.

### **501(h) Status Election**

To elect 501(h) status, your organization will need to file a single page form: IRS Form 5768 "Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation". It requires only the organization's name, address, and the first tax year to which the election will apply.

#### **Keep Track of Lobbying Activities**

It is essential to keep track of your lobbying, whether you elect 501(h) status or not, in order to calculate your total exempt purpose expenditures. Your bookkeeping system should include line items for total lobbying expenses as well as grassroots expenses. Since a large portion of your lobbying efforts will be staff oriented, your timesheets should have a method of tracking both direct and grassroots lobbying efforts. It is highly recommended that one employee be designated as the authority on the organization's lobbying efforts. A bookkeeping method is necessary to track all postage, copying, faxing and printed materials used in association with any lobbying efforts.

#### **Sanctions for Violation of 501(h) Standards**

Under the 1976 Lobby Law, an organization that either exceeds their overall expenditure limit OR the 25% grassroots-lobbying limit in any year will be assessed a 25% excise tax on its excess lobbying expenses.

#### **501(h) Election, Worry Free Lobbying**

The 501(h) expenditure election provides significant benefits over the "insubstantial part test," including:

- No limit on lobbying activities that do not require expenditures
- Clear definitions of various kinds of lobbying communications, which allows your organization to more easily determine whether or not it is engaging in lobbying activities
- Higher lobbying limits and fewer items that count toward the exhaustion of those limits
- Your organization is less likely to lose its exemption status, since the IRS may only revoke exempt status from electing organizations that exceed their lobbying limits by at least 50% averaged over a 4-year period (a non-electing organization may lose its status for a single year's excessive lobbying activities)
- No personal penalties assessed for individual organization managers whose organization exceeds its lobbying expenditures limits

## Special Circumstances

### Foundations

- Under the 1976 Lobby Law, a foundation may make (without tax liability) a general-purpose grant to a nonprofit that lobbies, whether or not the nonprofit chooses the 501(h) election; however, a foundation cannot earmark funds for lobbying.
- A private foundation may also make a grant to support a specific project that includes lobbying, as long as the amount of the grant is less than the amount budgeted for the non-lobbying portion of the project. The fact that another private foundation may have provided grant funds to the same project need not be a consideration.
- A foundation may not supply grant funds that support research in an area where that foundation has a primary lobbying interest.
- Grants by community foundations are subject to the same laws as grants by private foundations. They may also make a grant that directly funds lobbying; however, it will have to treat the grant as a lobbying expenditure of its own, with the same system of limits that apply to 501(c)(3) organizations.

### Federal Grants

- Nonprofits that receive federal grants, contracts or cooperative agreements cannot use any portion of their federal funds to lobby. The Office of Management and Budget (OMB) Circular A-122 issues cost principles covering most nonprofits on the prohibition of lobbying with federal grants. (For more info please go to <http://www.whitehouse.gov/omb/circulars/a122/a122.html>)
- Often it is unavoidable for organizations that contract with the federal government to use federal funds to lobby at the local level; therefore it is not prohibited.
- Grantees are subject to audits to verify that grant funds have not been used either directly or indirectly for any unallowable expenses.
- The following activities are not considered lobbying activities (according to the OMB Circular A-122):
  - Providing technical and factual information in response to a documented request.
  - Lobbying at the state level in order to directly reduce the costs or avoid material impairment of the organization's authority to perform the grant, contract or agreement. However, lobbying for the purposes of improving performance is not exempt.
  - Anything specifically authorized by statute to be undertaken with funds from the grant, contract or agreement.

### Using the Internet

This is an area of increasing scrutiny. The IRS is interested and involved in the issues surrounding lobbying and charitable giving using the Internet, listservs and websites. Please review our document titled "Using the Internet For Lobbying". It is available on our website at <http://www.nonprofitmaine.org/advocacy.asp>.

## Activities Surrounding Elections

**Your organization can do nothing to influence a federal, state or local election; it is cause for losing your tax-exempt status!**

The following activities are acceptable surrounding elections:

### **Voter Education and Registration**

- Your organization may participate in voter education and registration activities provided that your activities are nonpartisan.
- Your organization cannot endorse any candidate or support them (for example, by letting them use your office space).
- A nonprofit may sell, trade or rent its member list to candidates as long as the organization is paid fair value for its use.
- If your organization registers voters, you cannot ask them for whom they plan to vote.
- When conducting voter education, you cannot target a particular population group that may affect the outcome of the election. However, it is acceptable to focus on certain blocks of the community, such as minority groups, students, recent immigrants, etc., as long as the targeted groups are defined in terms of historical deprivation or discrimination, or as those groups who broadly share specific problems or have a community of interests.

### **Candidate Forums and Appearances**

- Your organization may organize candidate forums, yet all candidates must be treated fairly and impartially and the forum must address a broad range of issues. It can focus on one general topic, such as economic policy, but not on one specific issue, such as the minimum wage. It must have a nonpartisan person as the moderator.
- Candidate visits to your organization's events are risky. Candidates can appear at your organization's event, as long as they do so in a non-candidate capacity (for example, as an elected official). There can be no reference to their candidacy.

### **Publishing Voting Records**

- You may communicate how legislators actually vote on issues of concern to your organization.
- You must avoid the appearance of endorsing or opposing candidates based on their votes. Publishing voting records, in the midst of an election campaign, could cross the line into "electioneering", especially if your organization does not regularly publish voting records.

### **Candidate Questionnaires and Public Opinion Polls**

- Your organization may inform candidates of your position on particular issues and urge them to pledge their support on record. Candidates may distribute their responses, but your organization cannot. This also holds true for statements made by the candidate to the media. Your organization can distribute such statements following the election.

- The key to protecting your organization is to question all candidates, frame questions without a bias and cover a wide range of issues. You can include their responses in “voter’s guides”, as long as there is no evaluation of their responses.
- A public opinion poll can be an effective tool to convince candidates and elected officials to take your organization’s issues seriously. Since the poll uses scientific techniques and questions do not directly or indirectly concern the records/positions of particular candidates/parties, your organization can do this during an election cycle. You should not release polls to the press during an election (especially if you do not have a history of conducting polls). If it appears that your organization is trying to influence the public on issues central to the campaign, your nonprofit status could be at stake.

### Lobbying as a 501(c)(4)

If your organization plans to do a substantial amount of lobbying, consider establishing a 501(c)(4) organization. Under IRS rules, a 501(c)(4) organization may use dues and contributions for independent political spending, which must be reported to the Federal Elections Commission. However, 501(c)(4) organizations cannot make campaign contributions to federal candidates and they cannot receive union or business money.

Organizations that are tax-exempt under section 501(c)(4) do not have limitations on lobbying on behalf of their exempt purpose. Charitable contributions to 501(c)(4) organizations are not tax exempt. According to a 1983 U.S. Supreme Court decision, the first amendment requires that a 501(c)(3) organization be permitted to lobby indirectly through a 501(c)(4). However, the 501(c)(4) organization must be run as a separate legal entity and must pay all its costs with nondeductible funds. The IRS monitors this very closely! Again, it is very important to keep clear records.

### Political Action Committees

Organizations that are tax-exempt under 501(c)(3) of the Internal Revenue Code are not permitted to establish political action committees. There is nothing in the law to prohibit 501(c)(4) organizations from setting up Political Action Committees (PAC). These entities are permitted to raise and disburse money in a federal election campaign.



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members and Counsel  
From: Jonathan Wayne, Executive Director  
Date: March 1, 2007  
Re: Complaint against Democracy Maine

---

In 2006, Democracy Maine filed two financial reports under 21-A M.R.S.A. §1056-B stating that the organization had received contributions, and made expenditures totaling \$58,689.14, to oppose the Taxpayers Bill of Rights (TABOR) citizen initiative. Political consultant Roy Lenardson has filed a request that the Commission consider whether the organization should have, instead, registered and filed financial reports as a political action committee (PAC).

The Commission staff is preparing its meeting materials in an abbreviated manner because tomorrow's snow storm could interrupt state government and timely operations of the U.S. Post Office. Rather than a full memo with recommendations, we offer these preliminary thoughts.

**Good Faith of Democracy Maine in Filing §1056-B Reports**

Jonathan Crasnick is the Executive Director of Democracy Maine. As he explains in his February 6 response on behalf of Democracy Maine, he indeed consulted with PAC/Party/Lobbyist Registrar Martha Demeritt about how to report financial activity in

opposition to TABOR. Martha advised him that the organization should disclose its financial activities through §1056-B reports. We believe Mr. Crasnick was operating in good faith. Even if you determine that Democracy Maine was in error by not filing as a PAC, the staff preliminarily recommends that no civil penalty should be assessed because the organization's director sought out advice from the Commission staff in advance.

### **Democracy Maine does not appear to be a PAC**

We recommend that the question of whether Democracy Maine is a PAC be analyzed under Paragraphs (3) and (4) of 21-A M.R.S.A. §1052(A)(5)(A). Both of these paragraphs require that -- to qualify as a PAC -- an organization must have as its "major purpose" advocating the passage or defeat of a ballot question.

#### **5. Political action committee. The term "political action committee:"**

##### **A. Includes:**

- (1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election, including a candidate or question;
- (2) Any person who serves as a funding and transfer mechanism and spends money to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State;
- (3) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that makes expenditures other than by contribution to a political action committee, for the purpose of the initiation, promotion or defeat of any question; and
- (4) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that solicits funds from members or nonmembers and spends more than \$1,500 in a calendar year to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition, including the collection of signatures for a direct initiative, in this State; and

Based on the information provided to date, the Commission staff is inclined to conclude that Democracy Maine does not have as its major purpose advocating the defeat of TABOR. Although press releases and statements to the media alone may not provide a full picture of an organization's activities, the materials provided do not appear to suggest that opposing TABOR was Democracy Maine's major purpose. Also relevant is the timing of the founding of the organization in May 2005. While opposing TABOR may have been a significant project for Mr. Crasnick in 2006, the Commission staff is not ready to conclude that opposing TABOR was the major purpose of the organization.

#### **Completeness of §1056-B Reporting**

The staff wishes to raise for your consideration another issue: whether Democracy Maine's §1056-B reporting of contributions is complete. In its two §1056-B reports, the organization reported total expenditures of \$58,689.14, but its contributions totaled only \$1,705.00. Mr. Crasnick responds that the balance "came from Democracy Maine's funds for general activities."

In the recent attention over the sufficiency of §1056-B reporting, some have raised the general concern that if a §1056-B filer claims that it used its general funds to support or oppose a ballot question, there remains a possibility that the filer could be shielding the original source of those funds who provided them for the purpose of influencing an election. Indeed, this concern one of the central contentions of the complainant against the Maine Heritage Policy Center.

In the case of Democracy Maine, its website explains that it was founded by real estate developer and businessman Robert C.S. Monks. Democracy Maine's office is located at Mr. Monk's office on the fourth floor of City Center in Portland. Mr. Monks remains a one of its three board members. During the Commission's consideration of the complaint against the Maine Heritage Policy Center, I was asked informally by the press why the Commission was not considering why Mr. Monks was not included as a contributor on Democracy Maine's §1056-B reports, since – it was presumed – that Mr. Monks was the sole funder of the organization. In 2004, Mr. Monks was the sole contributor to a PAC, the Citizenship Fund, and he provided \$29,000 to the organization, which was largely spent in six highly contested State Senate races.<sup>1</sup>

In order to perform the Commission's statutory duty to verify that §1056-B reporting is complete, you may conclude that the question is worth pursuing even though it was not included in Mr. Lenardson's complaint and was first raised with me informally by the press based on inferences about Democracy Maine's funders. Since Mr. Monks was part of the organization's board of directors which officially voted in early September 2006 to oppose TABOR, it may be worth asking whether he provided funds to the organization *knowing* that they would be used to oppose TABOR. If that did occur, he should be listed as a contributor in Democracy Maine's §1056-B reports. Please be mindful, however, that Democracy Maine like any nonprofit organization is not generally required to disclose its funders and may be reluctant to disclose this information.

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<sup>1</sup> The PAC reported its first contribution from Mr. Monks on November 1, 2004, which in retrospect seems improbable because that was one day before the November 2 general election.



FROM : MAINE HERITAGE POLICY CENTER

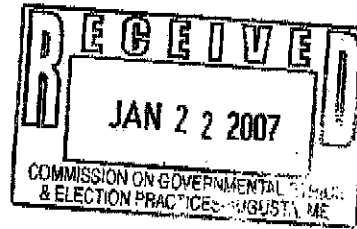
FAX NO. : 2077734385

Jan. 22 2007 05:56PM P1

Post Office Box 7829  
Portland, Maine 04112  
Phone: 207-321-2550  
Fax: 207-773-4385

**The Maine Heritage  
Policy Center**

# Fax

**To:** Jonathan Wayne**From:** Bill Becker**Fax:** 207-287-6775**Pages:** 7**Phone:** 207-287-6221**Date:** 1/22/2007**Re:** The Maine Heritage Policy Center**CC:**

Dear Jonathan,

The requested 1056-B report is attached per your letter of December 22, 2006.

Sincerely,

Bill Becker

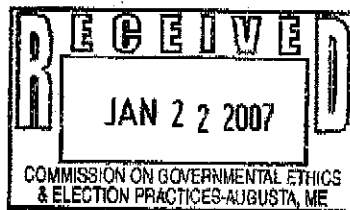
FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:56PM P2

*We the people of Maine...*

THE MAINE HERITAGE POLICY CENTER

[www.maineheritagepolicy.org](http://www.maineheritagepolicy.org)P.O. Box 7829  
Portland, Maine 04112Tel: 207.321.2550  
Fax: 207.773.4385

January 22, 2007

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Response to Final Agency Determination dated December 22, 2006**

Dear Jonathan:

Please find attached the requested report of The Maine Heritage Policy Center. The report filed is under 21-A M.R.S.A. §1056-B as determined by the Maine Commission on Governmental Ethics and Election Practices at its meeting on December 20, 2006 and directed by your letter of December 22, 2006.

This report is being sent via facsimile as well as U. S. Postal Service.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Becker".

Bill Becker  
President and Chief Executive Officer

*Attachment: Report (5 pages)*

FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

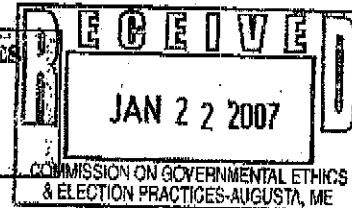
Jan. 22 2007 05:56PM P3

**STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

Mail: 135 State House Station, Augusta, Maine 04333-0135

Tel: (207)287-6221 FAX: (207)287-6775 Website: /www.maine.gov/ethics

**REPORTS OF CONTRIBUTIONS AND EXPENDITURES  
BY PERSONS OTHER THAN  
POLITICAL ACTION COMMITTEES  
(21-A M.R.S.A. § 1056-B)**



Any person who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission.

NAME OF PERSON The Maine Heritage Policy Center  
(Person means an individual, committee, firm, partnership, corporation, association, group or organization.)

Mailing address P.O. Box 9829

City, zip code Portland ME 04112

Telephone number 207-321-2550 Fax 207-7734385 E-mail info@mainepolicy.org

NAME OF TREASURER Bill Becker, Pres/CEO  
(or other officer or employee authorized to file this report, if person reporting is other than an individual)

Mailing address Same

City, zip code \_\_\_\_\_

Telephone number \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

The purpose for receiving contributions and making expenditures is (check one):

to SUPPORT ☒ or OPPOSE \_\_\_\_\_ ballot question number (if known) \_\_\_\_\_ or the ballot question regarding THE TAXPAYER BILL OF RIGHTS

TYPE OF REPORT AND FILING PERIOD (check one)

**Type of report:**

**Due date:**

**Filing period:**

- ( ) 6-day pre-primary  
( ) 42-day post-primary  
( ) 6-day pre-general  
( ) 42-day post-general

June 7, 2006  
July 25, 2006  
November 1, 2006  
December 19, 2006

January 1, 2006 to June 1, 2006  
June 2, 2006 to July 18, 2006  
July 19, 2006 to October 26, 2006  
October 27, 2006 to December 12, 2006

(☒) Other (specify): Per December 22, 2006 Determination Letter

( ) Amendment to: \_\_\_\_\_

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

\_\_\_\_\_  
Person's/Authorized Official's signature  
CGEPP Form 1056-B (Rev. 5/06)

01/22/2007  
Date



FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:57PM PS

*The Maine Heritage Policy Center*  
Name of PERSON

Page 1 of 2  
(Schedule B only)

### SCHEDULE B EXPENDITURES

Enter expenditures made aggregating in excess of \$100 in this election. Do not include in-kind expenditures on this schedule.

Date of Expenditure	Name of Payee or Creditor and Purpose of Expenditure	Amount
MAY - November	STAFF Time Allocated for Research - J. Scott Moody - 140 HRS.	\$7,000.00
MAY - November	STAFF Time Allocated to Public Speaking Events - J. Scott Moody 22 HRS.	\$1,100.00
MAY - November	STAFF Time Allocated for Travel - J. Scott Moody - 48 HRS.	\$2,400.00
MAY - November	Travel Reimbursement - J. Scott Moody	\$624.00
MAY - November	STAFF Time Allocated To Research - Bill Becker - 50 HRS.	\$2,650.00
MAY - November	STAFF Time Allocated To Public Speaking Events - Bill Becker - 85 HRS.	\$4,505.00
MAY - November	STAFF Time Allocated for Travel - Bill Becker - 55 HRS.	\$2,915.00
MAY - November	Travel Reimbursement - Bill Becker	\$536.00
<sup>expenditures</sup> 1. Total cash contributions this page only		\$21,730.00
Complete lines 2-4 on last page of Schedule B only: 2. Total from attached Schedule B pages		
<sup>expenditures</sup> 3. Aggregate of cash contributions of \$100 or less not itemized		
<sup>expenditures</sup> 4. Total cash contributions this reporting period (Add lines 1, 2 & 3)		

FROM :MAINE HERITAGE POLICY CENTER

FAX NO. :2077734385

Jan. 22 2007 05:57PM P6

*The Maine Heritage Policy Center*  
 Name of PERSON

Page 2 of 2  
 (Schedule B only)

### SCHEDULE B EXPENDITURES

Enter expenditures made aggregating in excess of \$100 in this election. Do not include in-kind expenditures on this schedule.

Date of Expenditure	Name of Payee or Creditor and Purpose of Expenditure	Amount
MAY - November	STAFF Time Allocated To Press Activities - Jason Fortin - 35 HRS.	\$1,050.00
MAY - November	Contracted Time Spent AT Public Speaking Events - Tarron Bragdon 40 HRS.	\$1,600.00
5/24/06	Full Court Press - Printing of Maine View #4-5	\$858.22
10/17/06	Full Court Press - Printing of Maine View #4-8	\$184.68
9/20/06	Hon. John Andrews - Travel Expenses to Maine	\$731.00
MAY - November	Kinko's - Copies for handouts at public speaking events	\$1,153.00
08/05/06	CRITICAL Insights - 2 questions on "Mindling Maine's Business Survey"	\$3,000.00
9/12/06	Travel Reimbursement for Paul Bachman, Beacon Hill Institute	\$125.29
8/29/06	Maine Secretary of State - Voter Guide	\$500.00
1. Total <sup>expenditures</sup> <del>cash contributions</del> this page only		\$9,232.19
2. Total from attached Schedule B pages Complete lines 2-4 on last page of Schedule B only:		\$21,730.00
3. Aggregate of cash <del>contributions</del> <sup>expenditures</sup> of \$100 or less not itemized		- 0 -
4. Total <sup>expenditures</sup> <del>cash contributions</del> this reporting period (Add lines 1, 2 & 3)		\$30,962.19

FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:57PM P7

The Maine Heritage Policy Center  
Name of PERSON

Name of PERSON

Page 1 of 1  
(Schedule C only)

(Schedule C only)

## SCHEDULE C

**IN-KIND CONTRIBUTIONS/EXPENDITURES**

With respect to all items and services received and expended, enter the date received/expended, a description of the item or service, and the fair market value. Enter contributor/payee or creditor only. If the fair market value of donated item or service is more than \$100.

Date of Contribution or Expenditure	Name of Contributor/Payee or Creditor	Description of goods, services, discounts or facilities received/expended	Fair market value
1. Total in-kind contributions/expenditures this page only  Complete lines 2-3 on last page of Schedule C: 2. Total from attached Schedule C pages  3. Total in-kind contributions received and expended this reporting period (Add lines 1 & 2)			   -0-



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Interested Persons  
From: Jonathan Wayne, Executive Director  
Date: December 27, 2006  
Re: Advice from Commission Staff on §1056-B Reporting

---

In response to a request, the Ethics Commission staff is offering the advice below regarding which financial activities are covered by 21-A M.R.S.A. §1056-B. This advice is offered provisionally until more permanent guidance can be determined through formal rulemaking or, possibly, a statutory amendment to §1056-B. If you believe you may need to file an amended §1056-B report as a result of this advice, please feel free to telephone Martha Demeritt at 287-4179. Please keep in mind that the advice has been drafted by the Commission staff, and has not been specifically approved by the Commission members.

#### **Contributions Covered by §1056-B**

Section 1056-B covers "contributions ... made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question ...." We propose that this would include the following:

- funds which the contributor specified were given in connection with a ballot question (*i.e.*, for the purpose of promoting or opposing a ballot question);
- funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question; and
- funds which can reasonably be determined to have been provided by the contributor for the purpose of promoting or opposing a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question.

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be for an organization's general activities would not be covered by Section 1056-B.

#### **Expenditures Covered by §1056-B**

Section 1056-B covers "expenditures made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question ...." We propose that this would include the following:

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)



- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;
- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees in connection with appearances at public or press events;
- staff time preparing presentations, testimony or press releases to promote or oppose the ballot question;
- research or technical analysis including the writing of reports, where the sponsoring organization knows or reasonably should know that the research will be used to promote or oppose the ballot question; and
- expenditures to distribute research or technical analysis of a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

#### **Expenditures Not Covered by §1056-B**

We propose that expenditures made merely to educate voters or others in a neutral way about a ballot question are not covered by §1056-B:

- Hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced.

In 2006, for example, this would include the many community organizations (rotary clubs, public libraries, church groups) that hosted TABOR-related debates.

- News stories, commentary, or editorials concerning a ballot question distributed through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question.
- Research or analysis of a ballot question which is not conducted for the purpose of initiating, promoting, or defeating the ballot question.

This could include research that is conducted in a neutral fashion and is intended to be communicated to opinion leaders, in academic settings, or to the public at large. When statewide ballot questions are pending, it is not unusual for individuals with specialized skills (*e.g.*, academics, attorneys, educational institutions, pollsters) to be hired to undertake research or analysis concerning the ballot question. If these activities are neutral and not made for the purpose of promoting or defeating the question, they would not be covered by §1056-B.

Subject: FW: Section 1056-B Report Guidance  
Date: Thu, 1 Mar 2007 13:21:05 -0500  
X-MS-Has-Attach:  
X-MS-TNEF-Correlator:  
Thread-Topic: Section 1056-B Report Guidance  
Thread-Index: AcczKNWmy3dd2s9zQWGhVYPfXwhFaAAIVMkgCjkModA=  
From: "Lavin, Paul" <Paul.Lavin@maine.gov>  
To: "Carl Lindemann" <carl@cyberscene.com>  
X-OriginalArrivalTime: 01 Mar 2007 18:21:07.0512 (UTC) FILETIME=[615D8B80:01C75C2E]  
X-Nonspam: None  
X-NAS-Language: English  
X-NAS-Bayes: #0: 0; #1: 1  
X-NAS-Classification: 0  
X-NAS-MessageID: 100  
X-NAS-Validation: {05CC28F7-969D-4640-898B-33B21AA18D71}

---

**From:** Lavin, Paul  
**Sent:** Monday, January 08, 2007 12:39 PM  
**To:** 'Dib9@aol.com'  
**Cc:** Wayne, Jonathan; Demeritt, Martha  
**Subject:** RE: Section 1056-B Report Guidance

Hi Dan,

Our view is that the exception to expenditure (21-A MRSA § 1012(3)(B)(1)) applies to the costs attributable to the station, newspaper, etc. that published the piece in question, not to the author, unless the author is paid by the broadcaster or publisher. So the cost of staff time would be reportable as would "staff time preparing presentations, testimony or press releases to promote or oppose the ballot question." Please let me know if you have any questions about this interpretation. Thanks.

Paul

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**From:** Dib9@aol.com [mailto:Dib9@aol.com]  
**Sent:** Monday, January 08, 2007 8:28 AM  
**To:** Lavin, Paul  
**Cc:** Wayne, Jonathan; Demeritt, Martha  
**Subject:** Re: Section 1056-B Report Guidance

I have a question about the guidelines. News stories, editorials, and commentaries are not expenditures. Does that mean that staff time spent by an organization drafting a commentary does not need to be reported?

Dan

---

**MARDEN, DUBORD,  
BERNIER & STEVENS**

---

ATTORNEYS AT LAW

WILLIAM P. DUBORD  
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J. WILLIAM DRUARY, JR.  
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ALBERT L. BERNIER  
(RETIRED)  
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(1891-1964)  
RICHARD J. DUBORD  
(1921-1970)  
HAROLD C. MARDEN  
(1900-1994)  
ROBERT A. MARDEN  
(RETIRED)

March 30, 2007

Jonathan Wayne, Executive Director  
State of Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Carl Lindemann's March 5, 2007 Complaint**

Dear Jonathan:

I am writing on behalf of the Maine Heritage Policy Center ("MHPC") in response to your request for a response to Carl Lindemann's complaint dated March 5, 2007.

MHPC's §1056(B) submission is complete and accurate. MHPC staff worked diligently to apply the guidelines prepared by the Commission's staff to MHPC's activities. When there was any question as to whether an expenditure should or should not be included in the §1056(B) filing, MHPC erred on the side of including the expenditure in the report.

The arguments made by Mr. Lindemann in his March 5, 2007 complaint are fundamentally the same as those he made in support of his earlier complaint against MHPC. He has offered no evidence to support his claim that MHPC's §1056(B) filing is incomplete. His complaint is based on his allegations concerning the veracity of statements by representatives of MHPC, his analysis of press releases, and his complaints about Commissioners and Commission staff. The Commission has heard all these arguments before. The arguments are not worthy of further consideration.

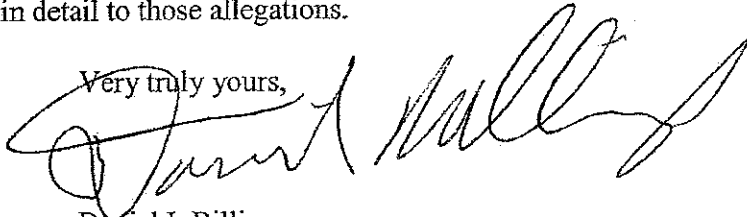
If the Commission decides that Mr. Lindemann's theories are worthy of consideration, I request that any action concerning Mr. Lindemann's new complaint be deferred until the court has completed its consideration Mr. Lindemann's appeal of the Commission's ruling on his earlier complaint. If Mr. Lindemann's appeal is successful, MHPC will likely be required to make new submissions to the Commission and any questions about the completeness of MHPC's §1056(B) filing will be moot.

Jonathan Wayne, Executive Director  
March 30, 2007  
Page 2

To date, MHPC has expended a great deal of time and resources responding to Mr. Lindemann's allegations. It would be an unfair burden on MHPC to require the organization to respond to Mr. Lindemann's new complaint at the same time it is participating in the court's consideration of his appeal.

I request that the Commission first determine whether this matter is worthy of consideration. If the Commission is going to take up the matter now, I request guidance regarding which of Mr. Lindemann's many allegations it considers worthy of consideration and additional time to respond in detail to those allegations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel I. Billings", written over a horizontal line.

Daniel I. Billings

e-mail: [dbillings@gwi.net](mailto:dbillings@gwi.net)

**Carl Lindemann**

P.O. Box 171  
Portland, Maine 04112

Phone 207-774-1936  
Email Carl@cyberscene.com

April 3, 2007

**BY ELECTRONIC AND USPS MAIL**

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333

Dear Executive Director Wayne:

If Maine Heritage Policy Center (MHPC) had concerns of the nature raised in Mr. Billings' letter of March 30, it seems to me these should have brought to the Commission's attention earlier, perhaps when you offered to discuss your proposed deadlines. Instead, MHPC apparently accepted the deadline proposed by the Commission, and now requests what amounts to an extension to those deadlines. Also, please note that I was not copied on this document and only received it because you kindly forwarded it to me. Please inform Mr. Billings to copy me on such communications regarding this case in the future.

Moreover, it should be noted that MHPC did not file a cross-appeal of the Commission's ruling that it file a report under 21-A M.R.S.A. § 1056-B. For this reason, it is disingenuous for MHPC to request a delay in consideration of my complaint on the ground that the Superior Court may find that disclosures under Section 1056-B were not required. Furthermore at the time that MHPC filed its 1056-B report to the Commission, I had already filed court petition for review of the Commission's ruling. At that juncture, MHPC could have sought from the Commission a stay of the ruling requiring MHPC to make disclosures under Section 1056-B. In deciding not to seek such a stay, and instead proceeding with its filing under 1056-B, MHPC arguably has waived any right to delay the Commission's discharge of its statutory responsibilities with regard to that filing, including any complaints challenging the accuracy and/or completeness of said filing.

Finally, whatever judgment is rendered as the result of the pending Petition for Review will, at a minimum, require MHPC to disclose information typically encompassed by Section 1056-B, which imposes less comprehensive disclosure requirements than the statutes governing political action committees. The public has been denied much substantive information about MHPC's actual involvement in the TABOR campaign for long enough. Also, should the courts properly determine that MHPC operated as a PAC with regard to TABOR and compel additional disclosures, such an outcome would not deprive the Commission of the authority to impose sanctions upon MHPC for making inaccurate representations in their 1056-B filing.

Additionally, I do wish to make a few brief observations responding to the many distortions contained in Mr. Billings' letter. His inappropriate *ad hominem* attacks and gross misrepresentations of the sum and substance of my complaint show bad faith through and through. I will respond to those at another time (see below). For now, it is worth noting that he

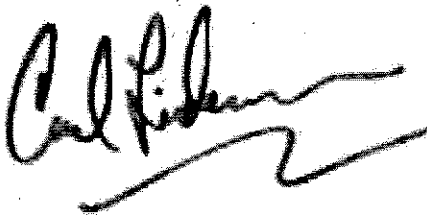
only mentions MHPC's purported efforts to validate expenditures in the 1056-B filing. This focus underscores my point that MHPC is greatly concerned about the IRS regulation that "no substantial part of a charity's activities consist of carrying on propaganda or otherwise attempting to influence legislation." Of course, as you consider how to respond to Mr. Billings' request, you may prefer to evaluate the glaring inconsistencies in the reported contributions that he omits any reference to whatsoever. Taken together, the real possibility emerges that MHPC had accepted the deadlines to respond to these charges and then discovered it did not really have any plausible response to make. In that light, you may judge that his request is merely a delaying tactic and should be treated as such.

Given this likely possibility and to avoid the kind of administrative inefficiencies and wasted time which were generated last fall due solely to misrepresentations and/or omissions in the initial response to the Commission made by Mr. Billings, I would respectfully request that the Commission require that any response now filed with the Commission on behalf of MHPC, to the second complaint, be by sworn affidavit.

By way of example, the Commission can merely demand of Mr. Billings that the narrative statements made in his March 30 letter be incorporated in such an affidavit. This will maximize administrative economy in the further processing of the pending complaint.

Once such a sworn statement is generated by the Respondent, I will generate a substantive response to the allegations therein.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl P. Fisher", with a long, sweeping horizontal line underneath.

cc: D. Billings  
P. Gardiner

**Wayne, Jonathan**

---

**From:** Carl Lindemann [carl@cyberscene.com]  
**Sent:** Wednesday, May 09, 2007 2:03 AM  
**To:** Wayne, Jonathan  
**Cc:** Dib9@aol.com; Lavin, Paul; Gardiner, Phyllis  
**Subject:** FOR INCLUSION IN: Packet for May 14th Meeting  
**Importance:** High  
**Attachments:** Becker give a yes on 1 - WGAN.mp3; Lindemann - add'l docs - MHPC 1056-B 5-9-07.pdf

Dear Jonathan,

It's been over a month since I sent what I thought I had been clear was a PRELIMINARY reply to Mr. Billings. I am sorry that, somehow, this was not adequately communicated. This is the first I've heard from you since, now with less than a week till the scheduled session and on the eve of you issuing a memo based on this preliminary, incomplete information.

As I had indicated in my communication of April 3, I had expected to provide a substantive response to Mr. Billing's allegations. Also, there is additional documentary evidence that is crucial for both the staff and Commission's consideration to put MHPC's 1056-B filing in an appropriate context.

I am on the road now and traveling through the day today (Wednesday) with limited phone and e-mail access but will arrive back in Portland tonight. I am scrambling, but I have attached some additional documents that are pertinent. I hope I will be able to provide a fuller, detailed narrative on Thursday to tie these together and then to address Mr. Billing's allegations made in his 3-30-2007 written statement.

For the time being, let me offer this. In brief, MHPC's 1056-B filing has been understood, till now, in the context of an organization that DID NOT expressly advocate for the ballot measure. As the following documents demonstrate, that is no longer viable. Since MHPC engaged in expressed advocacy by promoting the campaign slogan for taxpayerbillofrights.com, a broader range of its activities should be included in its 1056-B report than, one might argue, would be necessary if it had not expressly advocated.

Please note especially that, counter to Mr. Billing's claims, this is not an attempt to cover the same ground addressed earlier. These materials simply provide a more accurate framework for interpreting the subsequent 1056-B filing made by MHPC on January 22, 2007 (not March 6 as stated in the agenda).

Please review the attached .PDF file. I should hope that, despite the late date, this will inform the staff report as well as be included in the Commission packet. Here is a precis of its contents that, along with this e-mail, I request be included in the packet sent to the Commissioners:

Pgs. 1-2: Ancillary e-mails between Paul Lavin and Dan Billings regarding the clarification of the staff guidelines for 1056-B reporting. Mr. Billings has not (as yet) offered any explanation as to why public perception and the Commission staff's experience of MHPC's high visibility in the TABOR campaign could result in such an apparent underreport. However, it is reasonable to say that his constitutional concerns reflected in these e-mails point to a possible explanation he might offer - since MHPC had purportedly NOT engaged in expressed advocacy, a portion of its TABOR activities might not require reporting under 1056-B.

Pg. 3: The definition of "expressly advocate" from the Commission rules. See section 2-B:  
*The communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"*

3/25/2008

Pg. 4: Slide from MHPC's TABOR presentation. Note the "REASONABLE. EFFECTIVE" slogan. If you like, I can also send along the full presentation should you or the Commissioners wish to view this slide in context.

Pgs 5-6: taxpayerbillofrights.com flyers/posters. Note the "REASONABLE. EFFECTIVE" campaign slogan. This was also featured on all the yard signs instead of the typical "magic words" (Vote Yes on 1).

P. 7 transcript of Bill Becker/Dennis Bailer debate on WGAN-AM on 10-30-2006. Note Becker statement: "The Taxpayer Bill of Rights is Reasonable and Effective". Also, see attached sound clip to verify accuracy. This is also available independently on the WGAN.com Web site.

P. 8-9 transcript of Becker's Commission testimony of 10/31/06 where he provides an alternate account of above debate denying any expressed advocacy.

#### ANCILLARY MATERIAL:

P. 10 transcript of Becker testimony on 12-20-2006 discussing the opportunity for fundraising that the TABOR campaign offered.

P. 11 MHPC press release of 9-15-2006 announcing hiring of Development Director. Ms. Noyes is not listed in MHPC's 1056-B report. It is simply not credible that she did not invest any time whatsoever pursuing the fundraising opportunities Becker mentions above.

Pgs 12-23: MHPC's IRS Form 1023 filing. This substantiates my previous statements over MHPC's awareness of the "insubstantial part test" to maintain its public charity status. See esp. pg 22: "The organization's activities and products will not be substantially directed toward the enactment of particular legislation...". See also page 15, item #13: "Does or will the organization attempt to influence legislation?"

Again, it is regrettable that I did not have more advanced notice to provide a fully explication. I trust that you'll appreciate the importance of seeing MHPC's filing as that of an organization engaged in expressed advocacy as well as the identification of an MHPC staff member that likely engaged in fundraising activities for the organization's TABOR efforts.

Sincerely,

-CL

At 03:38 PM 5/8/2007, Wayne, Jonathan wrote:

The Commission member's packet for the May 14th meeting will be completed tomorrow morning. It will be posted on the internet by 12:00 noon. I will e-mail you a copy of the staff memo regarding Mr. Lindemann's second complaint.

Carl Lindemann  
P.O. Box 171  
Portland, ME 04112  
<http://www.cyberscene.com>  
(207) 774-1936

"Who seeks gold  
digs much earth  
and finds little"

-Heracleitus

3/25/2008



## Unknown

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**From:** Dib9@aol.com  
**Sent:** Monday, January 08, 2007 11:40 AM  
**To:** Lavin, Paul  
**Cc:** Wayne, Jonathan; Demeritt, Martha  
**Subject:** Re: Section 1056-B Report Guidance

Thanks. That is what I figured would be your take,

Dan

5/8/2007

## Unknown

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**From:** Dib9@aol.com  
**Sent:** Monday, January 08, 2007 12:22 PM  
**To:** Lavin, Paul  
**Subject:** Re: Section 1056-B Report Guidance

In a message dated 1/8/2007 12:46:15 P.M. Eastern Standard Time, Paul.Lavin@maine.gov writes:

| And can I interpret that to mean, "I figured that would be your take because it is so reasonable." Or, "I  
| figured that would be your take because you are the Enemy of Free Speech."

Well, if you put the First Amendment aside and apply the overbroad and vague statute as written, your interpretation is a good one.

;-)

5. Filing by Facsimile or Electronic Means. For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

## SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. Definitions. For purposes of this section, the following phrases are defined as follows:
  - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
  - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
  - C. "Independent expenditure" has the same meaning as in Title 21-A, section 1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. Reporting Schedules. Independent expenditures must be reported to the Commission in accordance with the following provisions:
  - A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except

# The Taxpayer Bill of Rights – Reasonable. Effective.

## Reasonable

Provide reasonable growth of government at all levels

- Growth rate- inflation plus population growth

Allow additional spending increases with voter approval

## Effective

Make it tougher to raise taxes

- Require voter approval of all tax and fee increases

Provide a Rainy Day Fund for emergencies

Return surplus taxes to taxpayer

## Needed

Maine is

- #1 in tax burden (with highest property tax burden)
- #39 in income
- #45 in small business climate

**Reasonable. Effective.**

# **TAXPAYER**

## **BILL OF RIGHTS**

**Feeling taxed to death?**

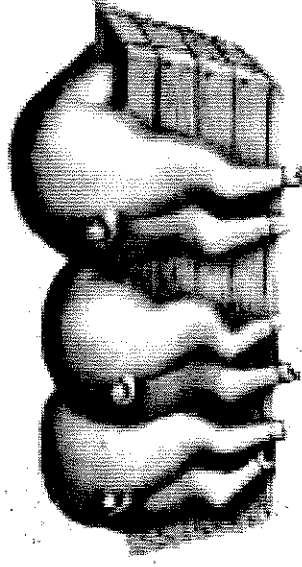
**Are Maine's high taxes hurting  
you and your family?**

**Let's cut property taxes and  
take control!**

**Spread the word**

**Vote YES on #1 on  
November 7th.**

**Pay no mind to our opposition.  
They have other concerns.**



**Find out what the Maine Taxpayer  
Bill of Rights is really about at  
[www.TaxpayerBillofRights.com](http://www.TaxpayerBillofRights.com)**

**Help out in your town. Call 207-924-3835 or sign up  
at [www.TaxpayerBillofRights.com](http://www.TaxpayerBillofRights.com)**

Reasonable. Effective.

# TAXPAYER BILL OF RIGHTS

## WHO'S SPEAKING FOR YOUR TOWN?

The Maine Municipal Association would like you to believe they speak for all Maine cities and towns.

## THEY DON'T.

Mayor LePage in Waterville doesn't think so either. The Mayor supports the Taxpayer Bill of Rights. In fact, more than 50 municipal officials across Maine have already come out in support of the Taxpayer Bill of Rights.

## WHY?

Maine has the **highest property taxes** in the country as a percent of our incomes!

The Taxpayer Bill of Rights will get spending under control and LOWER YOUR PROPERTY TAXES.

**LEARN MORE AND GET INVOLVED!**

Visit us on the web at

[www.TaxpayerBillOfRights.com](http://www.TaxpayerBillOfRights.com)

Paid for by the TaxpayerBillOfRights.com PAC



## CITY OF WATERVILLE OFFICE OF THE MAYOR

Re: TABOR

Mr. Geoff Herman  
Maine Municipal Association  
60 Community Drive  
Augusta, ME 04330-9486

Dear Mr. Herman,

As an elected official of the City of Waterville, I have seen little benefit over the years in being a paying member of MMA. Your invitation for the October 4, 2006 informational meeting concerning TABOR is one-sided and self-indulgent. Not all elected officials take such a dim view of our hardworking taxpayers in Maine.

Your sarcastic comment referencing the so-called "Taxpayer Bill of Rights" was offensive and unnecessary. As a special interest organization that depends on community dues paid by property taxpayers, I would expect a bit more moderation. You should inform taxpayers of both sides of the issue or none at all. Further, some of us in the public arena have deep concern for those elderly on fixed incomes who struggle to keep their homes due to high property tax rates, or the young couples who struggle to earn a decent living and create homes to raise families while faced with agonizing energy costs, high taxes, and unbearable health insurance costs.

It would seem to me that you should be helping communities in governing more efficiently, and in being fiscally responsible to constituents and refrain from expending taxpayer dollars for your own personal survival. In addition, negative letters from your organization and board members to others organization such as the Maine Oil Dealers Association are despicable.

Until this point, I have been relatively quiet on the TABOR subject, but now I feel compelled to defend Maine taxpayers against such irresponsible and decadent organizations. To me any community operating efficiently, while being fiscally responsible to its taxpayers, would have little or no difficulty in asking for excess the TABOR cap during times of need. Using emotional scare tactics, distortions, and lack of trust in our democratic society is contemptible.

Community referendums and town meeting are the purest form of democracy. We are still a society "of the people, for the people, by the people," not solely a society of special interest groups feeding off society. When government fails its constituent, citizens need to take action. While I would prefer having fiscally responsible elected officials, however, short of having that we must resort to referendums. I would agree that L.D.1, Palesky or TABOR may not be perfect, but the same old -same-old tax and spend mentality is far worse for Maine people.

I can assure you that at budget time this year, I will carefully review how much money our City spends on supporting special interest groups.

Sincerely,

Paul R. LePage, Mayor

## **WGAN-AM 10/30/2006 Close of Debate**

Mike Violette: Dennis Bailey, Bill Becker – gentlemen, thanks. I think we lived up to the expectation...

Dennis Bailey: And – no on 1.

MV: Thank you. You want to give a “Yes on 1” before we go Bill?

Bill Becker: The Taxpayer Bill of Rights is reasonable and effective.

DB: He can't say “yes”.

MV: Thank you fellas.

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JONATHAN WAYNE: So would you mind if I

-  
HON. KETTERER: Yes, just let me see if  
any Commission members have questions. No  
further questions, okay Jonathan go ahead.

JONATHAN WAYNE: I wanted to ask, how  
can you be so sure that you haven't engaged  
in express advocacy and I just wondered about  
Mr. Lindemann's example when Mike Violette  
turns to you and said, give us a yes on you  
know, one statement and then you replied -  
sounds like you didn't say no we're are a  
tax-exempt organization and we are not really  
urging you one way or the other but here's  
our analysis.

MR. BECKER: I can tell you exactly what  
I said because -

JONATHAN WAYNE: (Interposing) Well just  
in general you know, in the context of what  
the spirit of the law is trying to do and  
what people take away from your presentation  
in the media, how can you be so sure you  
haven't expressly advocated in support of  
TABOR.

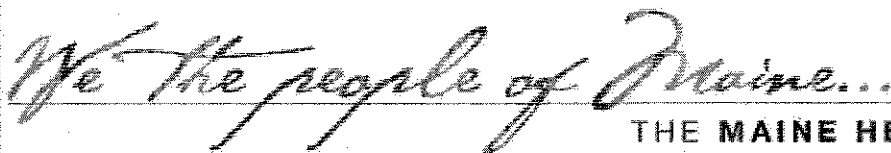


1  
2 MR. BECKER: Because I haven't expressly  
3 advocated. As a matter of fact what Dennis  
4 Bailey said at the end of that interview  
5 yesterday was, could Becker keep his - I said  
6 specifically I said, Maine voters would be  
7 wise to look at this issue I said, and if  
8 they like the current status quo then they  
9 should vote against it. If they think that  
10 we need a new direction and a new opportunity  
11 then there is much about the Taxpayer Bill of  
12 Rights that they might want to study.

13 Dennis Bailey said then, to my left, he  
14 said because he can't specifically say vote  
15 yes on one vote no on one, I vote no on one  
16 and he said that is right. Because I can't  
17 and I won't, I cannot put out stuff like that  
18 and I would not put out stuff like that which  
19 specifically says, here Dan Tabor wipes out  
20 real tax relief vote no and that is express  
21 advocacy. My organization has policy  
22 restriction. Their organization is doing  
23 political advocacy. There is a difference  
24 between policy and politics.  
25

Ethics Commission Testimony: 12-20-06; pgs 156-157  
(emphasis added)

MR. BECKER: Yeah. Yeah I would, um... I would say this. First of all that went to our members. It was not a general—it—we may have misstated when we said it's a general fund raising letter, a general fund raising letter to our own members, uh, which I think clears—makes a distinction in the law as opposed to sending it out to a broader direct mail list. Uh, second of all, uh, nowhere in there, though we're mentioning it, obviously, I mean, again, we were out there talking about it because we thought it was a good idea then. We think it's a good idea now. Um, a lot of our supporters, a lot of our members agreed with us and... **what a better time to raise money** than when you're, uh, in the—talking about it publicly. Obviously we are out there invited to many forums, many speeches that we were giving and—and—and wanted to do that. Uh, it's not unique. Uh, I have in front of me a nice letter from the Maine Center for Economic Policy, May 30<sup>th</sup>, 2006, uh, in which, uh, it's more expressly advocating a—a-a—uh, donation to support their efforts regarding the Taxpayer Bill of Rights. They may have only sent that to their members as well. Um, but again, organizations are out there talking about. The difference is of course, we weren't expressly advocating our position. Even in that letter.



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## Press Releases

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9/15/06: Heather Noyes Joins MHPC as Director of Development

## PRESS RELEASE

## The Maine Heritage Policy Center

FOR IMMEDIATE RELEASE  
SEPTEMBER 15, 2006CONTACT: JASON FORTIN  
(207) 321-2550

### Heather Noyes Joins MHPC as Director of Development

*The addition of Ms. Noyes positions the think tank for future growth.*

PORTLAND, ME – The Maine Heritage Policy Center (MHPC) today announced the appointment of Heather Noyes as Director of Development. In her role, Ms. Noyes will coordinate all of MHPC's ongoing development work, while also managing special events. Ms. Noyes brings to MHPC ten years of outside sales and management experience from her time with The Protocol School of Washington and C.B. Sullivan Company.

"The Maine Heritage Policy Center welcomes the skill set and experience that Heather brings to the organization," said Bill Becker, president and CEO of The Maine Heritage Policy Center. "MHPC is continually working to educate the Maine media, business leaders, and policymakers about public policy solutions that would lead to fiscal responsibility and a prosperous economy. We are confident that the addition of Heather will help MHPC secure the resources necessary to expand those efforts."

Ms. Noyes resides in Falmouth with her husband Tom and daughter Althea.

*The Maine Heritage Policy Center is a 501 (c) 3 nonprofit, nonpartisan research and educational organization based in Portland, Maine. The Center formulates and promotes free market, conservative public policies in the areas of economic growth, fiscal matters, health care, and education – providing solutions that will benefit all the people of Maine. Contributions to MHPC are tax deductible to the extent allowed by law.*

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P. O. Box 7829  
Portland, ME 04112  
<http://www.maineconomy.org>  
<http://blog.maineconomy.org>

Contacts:  
Jason Fortin  
Maine Heritage Policy Center  
207-321-2550  
[jfortin@maineconomy.org](mailto:jfortin@maineconomy.org)

**Application for Recognition of Exemption**  
**Under Section 501(c)(3) of the Internal Revenue Code**

Read the instructions for each Part carefully.  
**A User Fee must be attached to this application.**  
*If the required information and appropriate documents are not submitted along with Form 8718 (with payment of the appropriate user fee), the application may be returned to you.*  
**Complete the Procedural Checklist on page 8 of the instructions.**

**Part I Identification of Applicant**

<b>1a</b> Full name of organization (as shown in organizing document)  The Maine Heritage Policy Center		<b>2</b> Employer identification number (EIN) (If none, see page 3 of the <b>Specific Instructions</b> ).  22-3888250
<b>1b</b> c/o Name (if applicable)  		<b>3</b> Name and telephone number of person to be contacted if additional information is needed.  (207) 831-4674, William Becker
<b>1c</b> Address (number and street)  P.O. Box 7829	Room/Suite  	<b>4</b> Month the annual accounting period ends  December
<b>1d</b> City, town, or post office, state, and ZIP : 4. If you have a foreign address, see <b>Specific Instructions</b> for Part I, page 3.  Portland, ME 04112		<b>5</b> Date incorporated or formed  December 20, 2002
<b>1e</b> Web site address  		<b>6</b> Check here if applying under section: a <input type="checkbox"/> 501(e) b <input type="checkbox"/> 501(f) c <input type="checkbox"/> 501(k) d <input type="checkbox"/> 501(n)
<b>7</b> Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? . . . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," attach an explanation.		
<b>8</b> Is the organization required to file Form 990 (or Form 990-EZ)? . . . . . <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach an explanation (see page 3 of the <b>Specific Instructions</b> ).		
<b>9</b> Has the organization filed Federal income tax returns or exempt organization information returns? . . . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," state the form numbers, years filed, and Internal Revenue office where filed.		

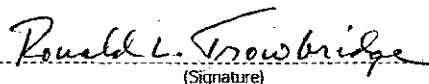
**10** Check the box for the type of organization. ATTACH A CONFORMED COPY OF THE CORRESPONDING ORGANIZING DOCUMENTS TO THE APPLICATION BEFORE MAILING. (See **Specific Instructions** for Part I, Line 10, on page 3.) See also Pub. 557 for examples of organizational documents.)

- a ☒ **Corporation**—Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state official; also include a copy of the bylaws.
- b ☐ **Trust**— Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.
- c ☐ **Association**— Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence the organization was formed by adoption of the document by more than one person; also include a copy of the bylaws.

If the organization is a corporation or an unincorporated association that has not yet adopted bylaws, check here ☒

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

Please  
Sign  
Here

  
(Signature)

Ronald Trowbridge, President  
(Type or print name and title or authority of signer)

1-20-03  
(Date)

**Part III Activities and Operational Information**

- 1** Provide a detailed narrative description of all the activities of the organization—past, present, and planned. **Do not merely refer to or repeat the language in the organizational document.** List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: **(a)** a detailed description of the activity, including its purpose, and how each activity furthers your exempt purpose; **(b)** when the activity was or will be initiated; and **(c)** where and by whom the activity will be conducted.

See Attachment #1

- 2** What are or will be the organization's sources of financial support? List in order of size.

The Center will be seeking contributions from grant-making foundations, individuals and corporations with public policy interests similar to the Institute.

- 3** Describe the organization's fundraising program, both actual and planned, and explain to what extent it has been put into effect. Include details of fundraising activities such as selective mailings, formation of fundraising committees, use of volunteers or professional fundraisers, etc. Attach representative copies of solicitations for financial support.

See Attachment #2

**Part III** **Activities and Operational Information (Continued)****4** Give the following information about the organization's governing body:**a** Names, addresses, and titles of officers, directors, trustees, etc.

Richard Jackson, Chairman of the Board, 55 Burbank Lane, Yarmouth, ME 04096

Ronald Trowbridge, President, 30 Colonial Drive, Durham, ME 04222

Thomas Mead, Treasurer, 9 Ledge Water Drive, Kennebunk, Maine 04043

William Becker, Executive Director and Secretary, ADDRESS TK

**b** Annual compensation

0

0

0

\$65,000

**c** Do any of the above persons serve as members of the governing body by reason of being public officials or being appointed by public officials?☐ Yes ☒ No

If "Yes," name those persons and explain the basis of their selection or appointment.

**d** Are any members of the organization's governing body "disqualified persons" with respect to the organization (other than by reason of being a member of the governing body) or do any of the members have either a business or family relationship with "disqualified persons"? (See **Specific Instructions** for Part II, Line 4d, on page 3.)☐ Yes ☒ No

If "Yes," explain.

**5** Does the organization control or is it controlled by any other organization?☐ Yes ☒ No

Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors?

☐ Yes ☒ No

If either of these questions is answered "Yes," explain.

**6** Does or will the organization directly or indirectly engage in any of the following transactions with any political organization or other exempt organization (other than a 501(c)(3) organization): (a) grants; (b) purchases or sales of assets; (c) rental of facilities or equipment; (d) loans or loan guarantees; (e) reimbursement arrangements; (f) performance of services, membership, or fundraising solicitations; or (g) sharing of facilities, equipment, mailing lists or other assets, or paid employees?☐ Yes ☒ No

If "Yes," explain fully and identify the other organizations involved.

**7** Is the organization financially accountable to any other organization?☐ Yes ☒ No

If "Yes," explain and identify the other organization. Include details concerning accountability or attach copies of reports if any have been submitted.

**Activities and Operational Information (Continued)**

- 8** What assets does the organization have that are used in the performance of its exempt function? (Do not include property producing investment income.) If any assets are not fully operational, explain their status, what additional steps remain to be completed, and when such final steps will be taken. If none, indicate "N/A."

Not fully operational; fundraising dependent on being granted 501(c)3 exemption status.

- 9** Will the organization be the beneficiary of tax-exempt bond financing within the next 2 years? ☐ Yes ☒ No

- 10a** Will any of the organization's facilities or operations be managed by another organization or individual under a contractual agreement? ☐ Yes ☒ No

- b** Is the organization a party to any leases?

☐ Yes ☒ No

If either of these questions is answered "Yes," attach a copy of the contracts and explain the relationship between the applicant and the other parties.

- 11** Is the organization a membership organization? ☐ Yes ☒ No

If "Yes," complete the following:

- a** Describe the organization's membership requirements and attach a schedule of membership fees and dues.

- b** Describe the organization's present and proposed efforts to attract members and attach a copy of any descriptive literature or promotional material used for this purpose.

- c** What benefits do (or will) the members receive in exchange for their payment of dues?

- 12a** If the organization provides benefits, services, or products, are the recipients required, or will they be required, to pay for them? ☐ N/A ☐ Yes ☒ No  
If "Yes," explain how the charges are determined and attach a copy of the current fee schedule.

- b** Does or will the organization limit its benefits, services, or products to specific individuals or classes of individuals? ☐ N/A ☐ Yes ☒ No  
If "Yes," explain how the recipients or beneficiaries are or will be selected.

- 13** Does or will the organization attempt to influence legislation? ☐ Yes ☒ No  
If "Yes," explain. Also, give an estimate of the percentage of the organization's time and funds that it devotes or plans to devote to this activity.

- 14** Does or will the organization intervene in any way in political campaigns, including the publication or distribution of statements? ☐ Yes ☒ No  
If "Yes," explain fully.



### Technical Requirements

- 1 Are you filing Form 1023 within 15 months from the end of the month in which your organization was created or formed? ☒ Yes ☐ No  
If you answer "Yes," do not answer questions on lines 2 through 6 below.

- 2 If one of the exceptions to the 15-month filing requirement shown below applies, check the appropriate box and proceed to question 7.

**Exceptions—**You are not required to file an exemption application within 15 months if the organization:

- ☐ a Is a church, interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church. See **Specific Instructions**, Line 2a, on page 4;
- ☐ b Is not a private foundation and normally has gross receipts of not more than \$5,000 in each tax year; or
- ☐ c Is a subordinate organization covered by a group exemption letter, but only if the parent or supervisory organization timely submitted a notice covering the subordinate.

- 3 If the organization does not meet any of the exceptions on line 2 above, are you filing Form 1023 within 27 months from the end of the month in which the organization was created or formed? ☐ Yes ☐ No

If "Yes," your organization qualifies under Regulation section 301.9100-2, for an automatic 12-month extension of the 15-month filing requirement. Do not answer questions 4 through 6.

If "No," answer question 4.

- 4 If you answer "No" to question 3, does the organization wish to request an extension of time to apply under the "reasonable action and good faith" and the "no prejudice to the interest of the government" requirements of Regulations section 301.9100-3? ☐ Yes ☐ No

If "Yes," give the reasons for not filing this application within the 27-month period described in question 3. See **Specific Instructions**, Part III, Line 4, before completing this item. Do not answer questions 5 and 6.

If "No," answer questions 5 and 6.

- 5 If you answer "No" to question 4, your organization's qualification as a section 501(c)(3) organization can be recognized only from the date this application is filed. Therefore, do you want us to consider the application as a request for recognition of exemption as a section 501(c)(3) organization from the date the application is received and not retroactively to the date the organization was created or formed? ☐ Yes ☐ No

- 6 If you answer "Yes" to question 5 above and wish to request recognition of section 501(c)(4) status for the period beginning with the date the organization was formed and ending with the date the Form 1023 application was received (the effective date of the organization's section 501(c)(3) status), check here ☐ and attach a completed page 1 of Form 1024 to this application.



**Part III Technical Requirements (Continued)**

7 Is the organization a private foundation?

☐ Yes (Answer question 8.)

☒ No (Answer question 9 and proceed as instructed.)

8 If you answer "Yes" to question 7, does the organization claim to be a private operating foundation?

☐ Yes (Complete Schedule E.)

☐ No

After answering question 8 on this line, go to line 14 on page 7.

9 If you answer "No" to question 7, indicate the public charity classification the organization is requesting by checking the box below that most appropriately applies:

**THE ORGANIZATION IS NOT A PRIVATE FOUNDATION BECAUSE IT QUALIFIES:**

- |                                       |                                                                                                                                                                                                                                                                           |                                                              |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| a <input type="checkbox"/>            | As a church or a convention or association of churches (CHURCHES MUST COMPLETE SCHEDULE A.)                                                                                                                                                                               | Sections 509(a)(1) and 170(b)(1)(A)(i)                       |
| b <input type="checkbox"/>            | As a school (MUST COMPLETE SCHEDULE B.)                                                                                                                                                                                                                                   | Sections 509(a)(1) and 170(b)(1)(A)(ii)                      |
| c <input type="checkbox"/>            | As a hospital or a cooperative hospital service organization, or a medical research organization operated in conjunction with a hospital (These organizations, except for hospital service organizations, MUST COMPLETE SCHEDULE C.)                                      | Sections 509(a)(1) and 170(b)(1)(A)(iii)                     |
| d <input type="checkbox"/>            | As a governmental unit described in section 170(c)(1).                                                                                                                                                                                                                    | Sections 509(a)(1) and 170(b)(1)(A)(vi)                      |
| e <input type="checkbox"/>            | As being operated solely for the benefit of, or in connection with, one or more of the organizations described in a through d, g, h, or i (MUST COMPLETE SCHEDULE D.)                                                                                                     | Section 509(a)(3)                                            |
| f <input type="checkbox"/>            | As being organized and operated exclusively for testing for public safety.                                                                                                                                                                                                | Section 509(a)(4)                                            |
| g <input type="checkbox"/>            | As being operated for the benefit of a college or university that is owned or operated by a governmental unit.                                                                                                                                                            | Sections 509(a)(1) and 170(b)(1)(A)(iv)                      |
| h <input type="checkbox"/>            | As receiving a substantial part of its support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public.                                                                                                  | Sections 509(a)(1) and 170(b)(1)(A)(vi)                      |
| i <input type="checkbox"/>            | As normally receiving not more than one-third of its support from gross investment income and more than one-third of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions). | Section 509(a)(2)                                            |
| j <input checked="" type="checkbox"/> | The organization is a publicly supported organization but is not sure whether it meets the public support test of h or i. The organization would like the IRS to decide the proper classification.                                                                        | Sections 509(a)(1) and 170(b)(1)(A)(vi) or Section 509(a)(2) |

If you checked one of the boxes a through f in question 9, go to question

14. If you checked box g in question 9, go to questions 11 and 12.

If you checked box h, i, or j, in question 9, go to question 10.

**Technical Requirements (Continued)**

- 10** If you checked box **h**, **i**, or **j** in question 9, has the organization completed a tax year of at least 8 months?
- ☐ **Yes**—Indicate whether you are requesting:
- ☐ A definitive ruling. (Answer questions 11 through 14.)
  - ☐ An advance ruling. (Answer questions 11 and 14 and attach two Forms 872-C completed and signed.)
- ☒ **No**—You must request an advance ruling by completing and signing two Forms 872-C and attaching them to the Form 1023.
- 11** If the organization received any unusual grants during any of the tax years shown in Part IV-A, **Statement of Revenue and Expenses**, attach a list for each year showing the name of the contributor; the date and the amount of the grant; and a brief description of the nature of the grant.

No unusual grants received.

- 12** If you are requesting a definitive ruling under section 170(b)(1)(A)(iv) or (vi), check here ☐ and:

- a** Enter 2% of line 8, column (e), Total, of Part IV-A . . . . .
- b** Attach a list showing the name and amount contributed by each person (other than a governmental unit or "publicly supported" organization) whose total gifts, grants, contributions, etc., were more than the amount entered on line 12a above.

- 13** If you are requesting a definitive ruling under section 509(a)(2), check here ☐ and:

- a** For each of the years included on lines 1, 2, and 9 of Part IV-A, attach a list showing the name of and amount received from each "disqualified person." (For a definition of "disqualified person," see **Specific Instructions**, Part II, Line 4d, on page 3.)
- b** For each of the years included on line 9 of Part IV-A, attach a list showing the name of and amount received from each payer (other than a "disqualified person") whose payments to the organization were more than \$5,000. For this purpose, "payer" includes, but is not limited to, any organization described in sections 170(b)(1)(A)(i) through (vi) and any governmental agency or bureau.

- 14** Indicate if your organization is one of the following. If so, complete the required schedule. (Submit only those schedules that apply to your organization. **Do not submit blank schedules.**)

	Yes	No	if "Yes," complete Schedule:
Is the organization a church? . . . . .		✓	A
Is the organization, or any part of it, a school? . . . . .		✓	B
Is the organization, or any part of it, a hospital or medical research organization? . . . . .		✓	C
Is the organization a section 509(a)(3) supporting organization? . . . . .		✓	D
Is the organization a private operating foundation? . . . . .		✓	E
Is the organization, or any part of it, a home for the aged or handicapped? . . . . .		✓	F
Is the organization, or any part of it, a child care organization? . . . . .		✓	G
Does the organization provide or administer any scholarship benefits, student aid, etc.? . . . .		✓	H
Has the organization taken over, or will it take over, the facilities of a "for profit" institution? . . . .		✓	I

**Part III** Financial Data

Complete the financial statements for the current year and for each of the 3 years immediately before it. If in existence less than 4 years, complete the statements for each year in existence. If in existence less than 1 year, also provide proposed budgets for the 2 years following the current year.

**A. Statement of Revenue and Expenses**

		Current tax year	3 prior tax years or proposed budget for 2 years			
		(a) From 12-02 to 12-02	(b) 01-03 12-03	(c) 01-04 12-04	(d) -----	(e) TOTAL
Revenue	1 Gifts, grants, and contributions received (not including unusual grants—see page 6 of the instructions).	20,000	262,920	399,130		
	2 Membership fees received	0	0	0		
	3 Gross investment income (see instructions for definition)	0	0	0		
	4 Net income from organization's unrelated business activities not included on line 3	0	0	0		
	5 Tax revenues levied for and either paid to or spent on behalf of the organization	0	0	0		
	6 Value of services or facilities furnished by a governmental unit to the organization without charge (not including the value of services or facilities generally furnished the public without charge)	0	0	0		
	7 Other income (not including gain or loss from sale of capital assets) (attach schedule)	0	0	0		
	8 Total (add lines 1 through 7)	20,000	262,920	399,130		
	9 Gross receipts from admissions, sales of merchandise or services, or furnishing of facilities in any activity that is not an unrelated business within the meaning of section 513. Include related cost of sales on line 22	0	0	0		
	10 Total (add lines 8 and 9)	20,000	262,920	399,130		
	11 Gain or loss from sale of capital assets (attach schedule)	0	0	0		
	12 Unusual grants	0	0	0		
	13 Total revenue (add lines 10 through 12)	20,000	262,920	399,130		
Expenses	14 Fundraising expenses	0	10,000	10,000		
	15 Contributions, gifts, grants, and similar amounts paid (attach schedule)	0	0	0		
	16 Disbursements to or for benefit of members (attach schedule)	0	0	0		
	17 Compensation of officers, directors, and trustees (attach schedule)	5,416	65,000	75,000		
	18 Other salaries and wages	0	57,500	104,000		
	19 Interest	0	0	0		
	20 Occupancy (rent, utilities, etc.)	0	28,500	34,500		
	21 Depreciation and depletion	0	0	0		
	22 Other (attach schedule)	1,879	124,625	185,630		
	23 Total expenses (add lines 14 through 22)	7,295	275,625	399,130		
	24 Excess of revenue over expenses (line 13 minus line 23)	12,705	(12,705)	0		

**Financial Data (Continued)**

<b>B. Balance Sheet (at the end of the period shown)</b>		Current tax year Date <b>2002</b>
<b>Assets</b>		
<b>1</b> Cash . . . . .	<b>1</b>	12,705
<b>2</b> Accounts receivable, net . . . . .	<b>2</b>	0
<b>3</b> Inventories . . . . .	<b>3</b>	0
<b>4</b> Bonds and notes receivable (attach schedule) . . . . .	<b>4</b>	0
<b>5</b> Corporate stocks (attach schedule) . . . . .	<b>5</b>	0
<b>6</b> Mortgage loans (attach schedule) . . . . .	<b>6</b>	0
<b>7</b> Other investments (attach schedule) . . . . .	<b>7</b>	0
<b>8</b> Depreciable and depletable assets (attach schedule) . . . . .	<b>8</b>	0
<b>9</b> Land . . . . .	<b>9</b>	0
<b>10</b> Other assets (attach schedule) . . . . .	<b>10</b>	0
<b>11</b> <b>Total assets</b> (add lines 1 through 10) . . . . .	<b>11</b>	12,705
<b>Liabilities</b>		
<b>12</b> Accounts payable . . . . .	<b>12</b>	0
<b>13</b> Contributions, gifts, grants, etc., payable . . . . .	<b>13</b>	0
<b>14</b> Mortgages and notes payable (attach schedule) . . . . .	<b>14</b>	0
<b>15</b> Other liabilities (attach schedule) . . . . .	<b>15</b>	0
<b>16</b> <b>Total liabilities</b> (add lines 12 through 15) . . . . .	<b>16</b>	0
<b>Fund Balances or Net Assets</b>		
<b>17</b> Total fund balances or net assets . . . . .	<b>17</b>	12,705
<b>18</b> <b>Total liabilities and fund balances or net assets</b> (add line 16 and line 17) . . . . .	<b>18</b>	12,705
If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation <input type="checkbox"/>		

Form **872-C**

(Rev. September 1998)

Department of the Treasury  
Internal Revenue Service**Consent Fixing Period of Limitation Upon  
Assessment of Tax Under Section 4940 of the  
Internal Revenue Code**

(See instructions on reverse side.)

OMB No. 1545-0056

**To be used with  
Form 1023. Submit  
in duplicate.**

Under section 6501(c)(4) of the Internal Revenue Code, and as part of a request filed with Form 1023 that the organization named below be treated as a publicly supported organization under section 170(b)(1)(A)(vi) or section 509(a)(2) during an advance ruling period,

The Maine Heritage Policy Center

(Exact legal name of organization as shown in organizing document)

P.O. Box 7829, Portland, ME 04112

(Number, street, city or town, state, and ZIP code)

and the

District Director of  
Internal Revenue, or  
Assistant  
Commissioner  
(Employee Plans and  
Exempt Organizations)

consent and agree that the period for assessing tax (imposed under section 4940 of the Code) for any of the 5 tax years in the advance ruling period will extend 8 years, 4 months, and 15 days beyond the end of the first tax year.

However, if a notice of deficiency in tax for any of these years is sent to the organization before the period expires, the time for making an assessment will be further extended by the number of days the assessment is prohibited, plus 60 days.

Ending date of first tax year 12/31/02  
(Month, day, and year)

Name of organization (as shown in organizing document)	Date
The Maine Heritage Policy Center	1-20-03
Officer or trustee having authority to sign	Type or print name and title
Signature ▶ <u>Ronald L. Trowbridge</u>	Ronald Trowbridge, President
<b>For IRS use only</b>	
District Director or Assistant Commissioner (Employee Plans and Exempt Organizations)	Date

By ▶

For Paperwork Reduction Act Notice, see page 7 of the Form 1023 Instructions.

Cat. No. 16905Q

## ATTACHMENT #1

IRS FORM 1023  
Part II, Question 1

### ACTIVITIES AND OPERATIONAL INFORMATION

The Maine Heritage Policy Center will engage in broad educational activities subject to the constraints of the regulations regarding 501(c)3 exempt organizations. The Center was formed to broaden the public policy debate in Maine by studying, researching and assembling materials and presenting an objective analysis to those interested in a wide range of public policy issues, including the general public; and the Center's activities, as outlined in this 1023 application, are designed as such. The organization's activities and products will not be substantially directed toward the enactment of particular legislation as defined by the courts and the Internal Revenue Code.

The Maine Heritage Policy Center shall provide a forum for the exchange of ideas be it through the written word or by means of meetings and conferences. The Center shall provide the general public with up-to-date research on important issues of the day and publish these findings in a variety of formats for the benefit of decision makers, the media, the business community and the public at large.

Research results will generally be published in such form as to be available to the interested public. The Center will publish hard copies of its products that it will make publicly available, will produce e-mail copies as appropriate, and will publish its products on the Institute's web site whenever possible. No research has been published to date.

Subject to the constraints of its tax-exempt status, the Center shall provide educational material to the public, with an over-all view to increasing its awareness regarding the benefits of increased reliance upon the private and nonprofit sectors for the delivery of public services.

The Center shall provide a resource bank of public policy experts available for legislative or executive committee testimony and shall be available to organize briefings for decision makers. The Center shall strive to keep the relevant elements of the business and nonprofit communities abreast of all educational and legislative developments which may benefit them.

The Center shall make all its studies available to all members of the Maine legislature regardless of party affiliation. In addition, the Center shall publish and/or disseminate the following, on a regular basis:

1. A series of periodic, in-depth analyses of public policy issues. Each report shall be accompanied by an executive summary and, when appropriate, press releases. Authorship shall generally be by outside contractors, who are experts in their various fields of study and/or experience.
2. A regularly issued newsletter mailed to all supporters of the Center and any/all other interested persons or organizations. This newsletter will be used for the purpose of informing the above-mentioned interested supporters/organizations about developments at the Center and will be written primarily by Center staff.

Additionally, the Center shall from time to time bring together local, state and national opinion leaders and policy makers to discuss issues and ideas in various settings, which may include, but not be limited to, the following:

- Issues conferences
  - Single or multi-day conferences convening local, state and national leaders to address specific issues.
- Breakfast or luncheon seminars throughout the state.
  - These brief (one and one-half to three hours in length) meetings might feature lectures by national, state or local experts in a given field; audience participants might be Center supporters, donors, media, and policymakers; these seminars might be combined with fundraising efforts.

Where appropriate, text from visiting speakers' lectures shall be published by the Center and distributed/disseminated in the manner of the Center's other publications.

Subject matter for these various activities, broadly speaking, will include, but not limited to local, state and possibly national public policy issues focusing primarily on the promotion of free-market economic policy, reforming public-sector service delivery systems, researching market-driven approaches to health care from, and developing ways to overhaul public education.

Maine Heritage Policy Center



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Ethics Commission Members  
From: Jonathan Wayne, Executive Director  
Date: May 9, 2007  
Re: Second Request for Investigation by Carl Lindemann

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On March 5, 2007, Carl Lindemann filed with the Ethics Commission a second request for an investigation regarding the financial activities of the Maine Heritage Policy Center (MHPC) in support of the Taxpayer Bill of Rights (TABOR) citizen initiative. His first complaint, filed on October 19, 2006, alleged that the MHPC's activities in support of TABOR qualified it as a political action committee (PAC) under Maine Election Law.

At its meeting on December 20, 2006, the Commission determined that the MHPC was not a PAC but was required to file a financial report of its contributions and expenditures relating to TABOR under 21-A M.R.S.A. §1056-B. Mr. Lindemann has appealed the determination to the Maine Superior Court. On January 22, 2007, the MHPC filed a §1056-B report showing four contributions totaling \$975.00 and \$30,962.19 in expenditures. These were the same four contributions that the MHPC identified in a December 4, 2006 letter to the Commission as the only contributions it received in 2006 that included a reference to TABOR on the contribution checks or in correspondence that accompanied the checks.



### **Carl Lindemann's Second Request for an Investigation**

Mr. Lindemann's second request for an investigation is attached for your consideration. His request includes a number of contentions regarding why the MHPC's §1056-B report is not complete and accurate. For the purposes of this memo, I have summarized what I regard as his two major arguments. First, he argues that the MHPC sent fundraising letters in 2006 that heavily mentioned TABOR, so it is highly unlikely that the MHPC received only four contributions to promote TABOR. Second, he argues that the MHPC has under-reported the amount of staff time which the organization dedicated to supporting TABOR.

### **Response by the MHPC**

Attorney Daniel Billings submitted a short response on behalf of the MHPC in a letter dated March 30, 2007. He states that the MHPC's §1056-B report is complete and accurate, and that the MHPC worked diligently to apply the guidelines provided by the Commission staff. He argues that Mr. Lindemann's points have been heard by the Commission before, are not supported by new evidence, and so are not worthy of consideration. He requests that if the Commission decides to consider them, the matter should be deferred until the Maine Superior Court has reached a decision on Mr. Lindemann's first request for an investigation. Mr. Billings states that the MHPC has spent a great deal of time and resources responding to Mr. Lindemann's allegations and it would be an unfair burden on the MHPC to require the organization to respond to Mr. Lindemann's new complaint at the same time it is participating in Mr. Lindemann's appeal in the Superior Court.

### **Reply by Carl Lindemann**

In reply to Mr. Billings' March 30 letter, Carl Lindemann asks the Commission to consider his second request for an investigation. He argues that by not appealing the Commission's determination that the MHPC was required to file a §1056-B report, the organization has waived its right to object to a request for an investigation. Also, he points out that "whatever judgment is rendered as the result of the pending Petition for Review will, at a minimum, require MHPC to disclose information typically encompassed by Section 1056-B, which imposes less comprehensive disclosure requirements than the statutes governing political action committees."

### **Staff Recommendation on Deferring the Second Complaint**

At the outset on May 14<sup>th</sup>, you may wish to consider the MHPC's request to delay your consideration of Mr. Lindemann's request until after the Maine Superior Court makes a ruling. If you are concerned that the MHPC has under-reported, I do not quite understand the MHPC's contention that you should defer your consideration until after the Superior Court has reached a decision. Regardless whether the MHPC reports as a PAC or as a §1056-B filer, it is required to disclose the contributions it has received for the purpose of supporting TABOR and the expenditures it made to support TABOR. I will consult further with the Commission's counsel prior to the May 14<sup>th</sup> meeting, but at this point I recommend taking the complainant's view on this procedural question. On the other hand, if you are comfortable with the MHPC's §1056-B reporting, I recommend voting on May 14<sup>th</sup> to take no action on Mr. Lindemann's second request.

## **Duty to Report Contributions under 21-A M.R.S.A. §1056-B**

On December 20, 2006, the Commission determined that the MHPC was required to file a report under 21-A M.R.S.A. §1056-B. This section was inserted in the PAC law in 2000 to cover organizations that do not qualify as a PAC but which raise or spend more than \$1,500 to influence a ballot question. Section 1056-B provides in full:

Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. [underlining added]

**1. Filing requirements.** A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

**2. Content.** A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question. [underlining added]

**3. Forms.** A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

On December 27, 2006 the Commission staff distributed the attached memo in response to a request for guidance from the MHPC about what activity to include in its §1056-B report. The memo was also distributed to previous §1056-B filers to encourage consistent reporting by all filers. With regard to reporting contributions, the staff offered the following guidance:

Section 1056-B covers “contributions ... made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question ....” We propose that this would include the following:

- funds which the contributor specified were given in connection with a ballot question (*i.e.*, for the purpose of promoting or opposing a ballot question);
- funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question; and
- funds which can reasonably be determined to have been provided by the contributor for the purpose of promoting or opposing a ballot question when viewed in the context of the contribution and the recipient’s activities regarding a ballot question.

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be for an organization’s general activities would not be covered by Section 1056-B.

This advice was not approved by you in advance of its distribution, but the staff mailed it during the week after the Christmas holiday in order to provide timely guidance to the MHPC about how to complete its §1056-B report. At your March 9, 2007 meeting, you approved including the bullet-point language within legislation intended to improve PAC and §1056-B reporting. In his most recent request, Mr. Lindemann argues that the MHPC has not complied with the second bullet point by failing to report “funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question.”

#### **MHPC’s Reporting of Contributions to Influence TABOR**

In its §1056-B report, the MHPC reported four contributions totaling \$975.00. In its December 4, 2006 letter to the Commission, the MHPC stated that it completed a review of all of its 2006 contributions. It could find only these four contributions which

included a reference to TABOR either on the contribution check or in correspondence accompanying the check.

Mr. Lindemann notes that the two 2006 MHPC fundraising letters received by the Commission cited the MHPC's work on TABOR at length. In particular, he argues that two thirds of the text of the fundraising letter dated August 2, 2006 concerned the MHPC's efforts to promote TABOR. He argues that the MHPC's §1056-B report should include all of the contributions received by the MHPC in response to the August 2, 2006 fundraising letter because they were all contributions made to influence TABOR.

#### *Background on MHPC Fundraising Concerning TABOR*

In his first presentation to the Commission on behalf of the MHPC, Dan Billings stated orally to the Commission that the MHPC had not solicited funds in support of TABOR. In his October 26, 2006 letter, Mr. Billings responded to the issue more fully:

[The MHPC] has not solicited or received any contributions to influence the outcome of a referendum campaign. ... While MHPC's activities may influence the referendum on the Maine Taxpayer Bill of Rights, [MHPC] has not solicited or accepted contributions or made expenditures for the purpose of initiating, promoting, defeating, or influencing in any way the outcome of the referendum. MHPC's purpose in speaking about the Maine Taxpayer Bill of Rights is to further the Center's mission to analyze and promote conservative and free market public policy solutions that will benefit the people of Maine. (underlining in original)

On November 27, 2006, Carl Lindemann submitted to the Commission a check dated November 1, 2006 to the MHPC which he had asked a friend of his, David Briney, to make to the organization. In response the MHPC sent a thank you letter to Mr. Briney dated November 6, 2006. The letter states: "We are very grateful for this donation, and

will use it to advance our mission of promoting The Taxpayer Bill Of Rights, a solution that will benefit all people of Maine.” (underlining added.) I interpreted this letter as a form letter sent to thank contributors who had made a donation for the purpose of supporting TABOR. Because the existence of an apparent form letter seemed at odds with the statements by Mr. Billings in his October 26<sup>th</sup> letter, I requested more information from the MHPC in the form of four questions numbered (1) - (4).

On December 4, 2006, Dan Billings responded in writing. In response to Question (1) (*“Has the MPHC received any funds from any source specifically to promote, initiate, or influence the TABOR initiative?”*), Mr. Billings responded:

MHPC has not received any funds from any sources specifically to promote, initiate, or influence the TABOR initiative. All contributions received are used to support the overall operations and general mission of MHPC. No funds were specifically segregated or dedicated to activities related to the Maine Taxpayers Bill of Rights. No activities undertaken by MHPC related to the Maine Taxpayers Bill of Rights were contingent upon or the result of any funds received from any source.

As a result of this question, MHPC staff has reviewed all contributions received by the Center this year. Four contributions, including the contribution from Mr. Briney, were made along with correspondence or references on checks mentioning TABOR or MHPC’s work related to TABOR. ...

In response to Question (2) (*“Has the MPHC solicited any contributions or other funds in connection with the TABOR initiative?”*), Mr. Billings stated:

No. However, MHPC has mentioned its TABOR related work in its general fundraising activities. For example, the enclosed fundraising letter, marked as Exhibit A, mentions MHPC’s work related to TABOR. It should be noted that though the letter is dated October 18<sup>th</sup>, it did not go out until after November 7<sup>th</sup> and no contributions were received as a result of the letter before November 7<sup>th</sup>. Also, the letter was only sent to existing MHPC members.

In response to Question (3) (*“Is the November 6 letter from Bill Becker a form letter used by the MHPC to thank donors for contributions or other funds given to promote TABOR?”*), Dan Billings responded

No. Enclosed, marked as Exhibit B, is a copy of the form letter used by the MHPC to thank contributors. As you can see, changes were made to the regular form letter to recognize Mr. Briney’s expressed interest in MHPC’s work related to TABOR. It is MHPC’s practice to alter the general form letter as a result of areas of interest mentioned by the donor.

At the December 20, 2006 meeting, Dan Billings and William Becker provided further testimony regarding the MHPC’s fundraising, and I have attached the relevant pages of the transcript for that meeting. Mr. Becker testified that he believed contributors to the MHPC were supporting “our overall mission” and “our ongoing work on spending limits” – not TABOR specifically. (Transcript, at 108.) He repeated that “we did not solicit any contributions to support activities related to TABOR, [] we did not segregate funds for TABOR related activities and none of the activities were tied to or dependent upon receiving contributions.” (Transcript, at 110.)

#### *MHPC’s August 2, 2006 and October 18, 2006 Fundraising Letters*

In its consideration of Mr. Lindemann’s previous complaint, the Commission received two of the MHPC’s 2006 fundraising solicitations. Both make significant mention of the MHPC’s work in support of TABOR, which is not surprising. Other 2006 fundraising letters may have mentioned TABOR as well.

In the MHPC’s December 4, 2006 submission, it included a MHPC fundraising letter dated October 18, 2006 as Exhibit A. Mr. Billings refers to it as an example of “general fundraising activities,” although five of the seven paragraphs in the letter

mention TABOR or the MHPC's work on TABOR. In their testimony on December 20, Mr. Billings and Mr. Becker explained that the letter was intended to be mailed before the November 7, 2006 general election but because of a problem with a printer or mailhouse it was not distributed until after the election. (Transcript, at 159-60.)

On December 21, 2006 (the day after the Commission reached its determination that the MHPC was not a PAC), the Commission staff received another MHPC fundraising solicitation dated August 2, 2006. It was submitted to the Commission by Christopher St. John of the Maine Center for Economic Policy.

The August 2, 2006 solicitation was an e-mail which describes TABOR as a reasonable and effective way for Maine to begin repairing its lagging economy and as one of the MHPC's top priorities. It certainly includes language that could lead some recipients to believe that their contribution would be used by the MHPC conduct public relations efforts in support of TABOR in the coming three months before the election:

The Taxpayer Bill of Rights is a reasonable and effective way for Maine to begin repairing its lagging economy. It paves the way for lower taxes and a more favorable business climate, attracting new jobs, strengthening the economy and increasing incomes.

The net result will be to expand the economic pie – securing existing jobs, while keeping young people, families, and retirees in Maine. It will also create an environment where fewer people will need to rely on government assistance programs, thus relieving at least some of the pressure on state and local government. It is, in short, smart growth for our public and private sectors.

Now more than ever, your support is needed to help us educate Maine people about the opportunity that could be found through a reasonable and effective measure. [emphasis added] Unfortunately, there are those who are actively misleading the public and distorting the facts.

However, thanks to your support and generosity, we will continue to provide truthful and credible analysis, information, and commentary about



Maine's competitive position and how we can improve it. It's great when the facts are on our side!

Please consider a gift today to support the important work of The Maine Heritage Policy Center.

On the other hand, the e-mail also contains some indications that the funds raised would be used for the general work of the MHPC. The e-mail asks: "Will you please consider a gift to our Summary Annual Fund Drive today?" and "Please consider a gift today to support the important work of the Maine Heritage Policy Center." It also states "we will continue to provide truthful and credible analysis, information, and commentary about Maine's competitive position and how we can improve it," which may imply continued communication efforts beyond TABOR.

#### *Staff Recommendation on Reporting of Contributions*

I believe Carl Lindemann has raised a valid argument about the MHPC's reporting of its contributions. It is distinctly possible that individuals who received the August 2, 2006 or other fundraising communications made contributions to the MHPC for the purpose of promoting the TABOR ballot question. Even if these funds were in fact used for general purposes, it is not an unreasonable interpretation of 21-A M.R.S.A. §1056-B to conclude that those contributions must be included in a §1056-B report.

Part of the dispute between the complainant and the MHPC seems to rest on whether the reporting obligation in §1056-B is tied to the contributor's purpose in making the contribution or to the recipient's (i.e., MHPC's) purpose in soliciting and receiving the contributions. Relying on the guidance of the Commission staff in its December 27 memo (not binding on you), Mr. Lindemann asks the Commission to consider the

contributor's purpose, and urges the Commission to conclude that all contributions made in response to the August 2, 2006 solicitation and similar communications should be considered made to influence TABOR.

The Commission has not received a full response from the MHPC to the substantive points in Mr. Lindemann's second complaint. Based on its 2006 submissions, however, it seems likely that the MHPC would argue that it complied with the §1056-B requirement because the organization's purpose in soliciting and receiving contributions was to use the income for the organization's overall operations – not specifically to influence TABOR.

Two other arguments potentially are available to the MHPC. First, it might argue that it has no way of knowing whether a 2006 contributor made a donation to support TABOR or to support the MHPC's general advocacy for limited government, other than by looking for some objective notation on each contribution it received. Also, many non-profit organizations raise funds with the expectation that their contributors will be kept private. Presumably, the MHPC would object to being compelled to disclose contributors who had not intention of influencing an election.

The MHPC's reliance on its purpose in receiving the contributions and its actual use of the funds for general operations is reasonable, but it could lead to less disclosure of money contributed to influence elections. To illustrate this, I have attached two fundraising e-mails of Democracy Maine supplied to the Commission as part of a complaint that Democracy Maine was a PAC. The first (dated September 28, 2006) asks for an on-line contribution to "help Democracy Maine spread the truth about TABOR" while the second (dated October 3, 2006) explicitly states that funds raised would be used

to pay for newspaper advertising against TABOR. On the MHPC's view, would Democracy Maine be entitled not to disclose the contributors who responded to the September 28, 2006 solicitation if Democracy Maine used those revenues for its general operations?

Both interpretations of §1056-B have some basis in the Election Law. The definition of a "contribution" to a candidate seems to refer to the contributor's purpose in giving something of value to candidates. ("A gift ... of anything of value made for the purpose of influencing the nomination or election of any person to ... office ....") (21-A M.R.S.A. §1012(2)(A)(1)) Subsection (2) of §1056-B refers to the filer's purpose in receiving contributions or making expenditures ("The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question.")

I recommend that you consider the disclosure purposes of the campaign finance law and the language in §1056-B, and consider whether you are comfortable with the MHPC reporting only those contributions that explicitly mentioned TABOR. If you have doubts about whether this reporting complies with the requirements of §1056-B, the staff recommends that you schedule this matter for the June meeting and request any additional information you require. For example, you might be interested in topics or question such as:

- A description (or copies) of all 2006 MHPC fundraising communications that highlight in a significant way the MHPC's work in support of TABOR
- An explanation why the MHPC believes that it is required under §1056-B to report only those contributions that specifically mentioned TABOR
- An explanation whether the MHPC sent to its members who responded to the August 2, 2006 fundraising e-mail the TABOR-specific thank you letter received

by Mr. Briney or the “general” thank you letter attached as Exhibit B to Mr. Billings’ December 4, 2006 letter. The MHPC’s choice of thank-you letter could be an objective indication whether the MHPC believed that contributions received in response to the August 2, 2006 e-mail were made to promote TABOR or were made to promote the organization’s overall mission.

- If a contributor uses the MHPC’s on-line donation form on the organization’s website, the only opportunity for a contributor to cite TABOR as the purpose of the contribution is to type a comment in the “Comments” box. In that context, is it reasonable to conclude that the only contributions made to support TABOR in response to the August 2, 2006 e-mail were those that specifically mentioned TABOR on a check or in correspondence that accompanied a contribution?

If, on the other hand, you believe the MHPC has adequately explained its reporting of contributions, the staff recommends voting to taking no action with respect to this issue.

#### **Mr. Lindemann’s Second Argument: Under-Reporting of Staff Time**

Because of time constraints, I will summarize the other major contention in Mr. Lindemann’s request for an investigation: the MHPC has under-reported the amount of staff time it dedicated to supporting TABOR in 2006. Mr. Lindemann focuses on the six-month period of May 5 – November 7, 2006. He observes that 18 of the MHPC’s press releases (60% for that period) relate to TABOR, but that the MHPC reported only 35 hours of labor by Jason Fortin, the MHPC’s Director of Communications. According to Mr. Lindemann, this represents only 4% of Mr. Fortin’s work time for the six-month period leading up to the general election.

Mr. Lindemann has calculated that during the six-month period, each employee was available to work for 984 hours. The MHPC reported that William Becker, the MHPC’s Executive Director, spent 190 hours in support of TABOR in speaking engagements, research, and travel. Mr. Lindemann believes that this amount is less than 20% of his work time for the period. He finds this implausible, but he has not cited

specific reasons. For example, is the amount of 190 hours inconsistent with the volume of TABOR-related activities which Mr. Becker engaged in (public forums, comments to the press, etc.)? Perhaps Mr. Lindemann believes the reason is obvious based upon his monitoring of the MHPC, but his reasoning is not clear from the March 5 request.

Mr. Lindemann argues that the MHPC's total TABOR-related expenditures of \$30,962 account for only 12.4% (about one-eighth) of MHPC's "projected budget" for the late part of 2006.<sup>1</sup> Apparently, he believes this total is incredible, but he does not explain why the Commission must conclude that the MHPC's total TABOR expenditures were in fact higher.

My recommendation would be to ask Mr. Lindemann at the May 14<sup>th</sup> meeting for a further explanation why he believes that these reported expenditures on staff time are not credible. After listening to his explanation, if you have significant doubts about whether the reporting is accurate, I would recommend that you schedule this matter for the June meeting of the Commission. You may wish to ask the MHPC to describe some of its other significant projects during the six months leading up to the November 7, 2006 general election to obtain a sense of context for evaluating whether the staff time reported is reasonable.

Thank you for your consideration of this memorandum.

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<sup>1</sup> He has extrapolated that the MHPC's six-month budget was \$250,000 based on a comment Mr. Becker made to the Forecaster newspaper about the MHPC having a projected annual budget of \$500,000.

# Carl Lindemann

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Maine Commission on Governmental Ethics and Elections Practices  
Executive Director Jonathan Wayne, Esq.  
135 State House Station  
Augusta, ME 04333

May 11, 2007

Dear Executive Director Wayne,

As you recall, I wished to make a fuller response than was possible given the time restraints in composing my e-mail of May 9 and gathering additional documents for inclusion in the Commission's materials. This was to answer the allegations made in Mr. Billings' reply of March 30. Now, it appears some of those allegations, unchallenged, have been taken up into the Staff's recommendations and so these all must be addressed.

It would appear that the staff memo of May 9 suggests to the Commission that it presently has before it two preliminary questions:

a) Question of immediate dismissal of complaint: whether the complaint of March 5 should be dismissed without any hearing or further evidence being adduced. This is expressed in your online summary as follows: *the staff recommends that the Commission decide whether the allegations in the second complaint are worth pursuing.* This restates Mr. Billings' request made in his reply on March 30: *I request that the Commission first determine whether this matter is worthy of consideration.*

This request is governed by 21-A M.R.S.A. § 1003(2):

**Investigations requested.** A person may apply in writing to the Commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The Commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

Please note that your request for response from Maine Heritage Policy Center (MHPC) on March 6 misstate this statute as: "...if the reasons stated for the request show sufficient grounds for believing that a violation has occurred." (emphasis added) This represents a far different standard than that of 21-A M.R.S.A. § 1003.

Mr. Billings' request amounts to the equivalent of a civil Rule 56 Summary Judgment request, which the courts all describe as an "extraordinary" remedy to be utilized only in the most convincing of circumstance, and which assigns to the defendant the high burden of showing –

while viewing the evidence in the light most positive to the complainant - that the complaint fails to state a claim upon which relief may be granted. Please also note that such Summary Judgment motions always mandate that the factual averments in such motions be made by sworn Affidavit.

b) Question of appropriate process for adjudication: If the Commission chooses to entertain the complaint, what process should be used.

Therefore, I would first ask that the Commission take Administrative Notice pertaining to the complaint of March 5 2007, of the Commission's record in the matter of the October 19, 2006 complaint for the purposes of resolving these preliminary procedural issues raised by your memo to the Commission of May 9, 2007.

Second, I would make the following assertions concerning these preliminary procedural issues:

1. Mr. Billings has been, and continues to be, a fact witness before this Commission.

The fact that Mr. Billings is also a lawyer does not preclude him from being categorized as a fact witness. He has made, and continues to make, as a part of MHPC's evidentiary case, numerous oral and written assertions as to facts pertinent -- and central -- to the allegations in both my October 19 complaint, and my March 5 complaint. That his past statements were not sworn, either by oral oath at hearing, or within an affidavit, does not prevent him from being categorized as a fact witness. In fact, he appears to be the continuing central, primary fact witness on behalf of MHPC.

2. This Commission's past written findings provide incontrovertible evidence that some of Mr. Billings' past factual affirmations -- including not only "out-of-court", statements, but "in-court" ones made directly to this tribunal (either orally or by written filing) were false.
3. Past false in-court or out-of-court statements by a fact witness mandate a presumptive negative inference as to credibility of continuing, or other, factual affirmations by that same witness.

It is a commonplace of Judicial and Administrative Law that proof of past unreliable or untrue statements by a witness (particularly those made "in-court") allows a fact-finder (including a jury, judge, or an administrative body such as this Commission) to make negative inferences about the reliability or truth of other, or later, factual averments by that same witness.

4. This Commission must apply such a negative inference concerning the reliability of factual affirmations made by Mr. Billings in adjudicating the two procedural issues outlined above.


A.) "Summary Judgment": The application of such a negative inference mandates that this Commission not grant the "extraordinary" remedy of some kind of Summary Judgment, by immediately dismissing the complaint. In other words, viewing the complaints' allegations in the

light most positive to the complainant requires that this Commission conclude that Mr. Billings' factual averments set forth in his written filings on the March 5 complaint are suspect, and that the averments which I have submitted are entitled – for this preliminary determination – to a presumption of truth.

B.) Continuing Process to be applied by Commission: this negative inference concerning the reliability of MHPC's primary witness, Mr. Billings, should also be applied to combine with the plain language of the statute re: sec. 21-A M.R.S.A. § 1003(1, 3, 4), empowering this Commission to:

1. seek further factual background by ordering either the State Auditor and/or the State Attorney General to conduct a preliminary factual investigation of MHPC's actions and statements;
2. insist that any factual averments made by Mr. Billings or other fact witness called/presented by MHPC be sworn at hearing and/or by affidavit.

Yours very truly,

A handwritten signature in black ink, appearing to read "Carl P. Linder", with a long, sweeping horizontal line underneath.





STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**Approved Minutes of Agenda Item #5, May 14, 2007 Meeting**

**Agenda Item #5 Request for Investigation/Carl Lindemann and Maine Heritage Policy Center**

Due to a conflict of interest, Ms. Ginn Marvin recused herself from the discussion of this matter. Mr. Friedman chaired this portion of the meeting.

Mr. Wayne explained that Mr. Lindemann's appeal of the Commission's determination in December as to whether Maine Heritage Policy Center should be considered a PAC is still pending. Mr. Lindemann is complaining that the 1056-B report filed in January by MHPC at the request of the Commission is not complete. MHPC has filed a response requesting the Commission decide whether this second complaint is worth considering at this time, since the appeal is still in the Court's hands.

Mr. Friedman expressed concerns as to whether this discussion has any validity at this point in time since the appeal is still pending. He asked Assistant Attorney General, Phyllis Gardiner for her thoughts on whether this is the appropriate time to consider this second complaint. Mr. Friedman reviewed the order of events and the status of the appeal.

Mr. Friedman asked whether, if the Superior Court does rule in Mr. Lindemann's favor and MHPC is a PAC, that would cause the 1056-B report filed by MHPC to be withdrawn or subsumed.

Ms. Gardiner thought it would then be subsumed, in effect, because a PAC report would be broader in terms of reporting all contributions and expenditures and thus include more than the 1056-B report.

Mr. Friedman stressed that the issue is not whether these complaints are worth pursuing; the issue here is whether the complaints should be pursued at this time. Procedurally, Mr. Friedman does not believe the complaint is ripe because the Commission has not received a final adjudication as to MHPC's status. At this point, he thinks Mr. Lindemann and Mr. Billings should be heard as to the appropriateness of

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addressing the issue today. Mr. Friedman thought this hearing ought to be delayed until after the court has ruled.

Mr. Cassidy asked whether MHPC would have to report retroactively if the court determined it was a PAC. Ms. Gardiner confirmed that it would. Mr. Cassidy agreed that it would be wise to wait at this point; however, he would like to hear from Mr. Lindemann and Mr. Billings on the issue of delaying the hearing on this complaint.

Ms. Thompson expressed concern with the Commission not hearing a complaint that has been filed against someone who submits a 1056-B report. She believes all complaints should be heard when they are filed regardless of what may be pending. Ms. Thompson asked what the normal procedure is when someone files a complaint against a 1056-B filer. She asked if the staff looked at the MHPC 1056-B report. Mr. Wayne said that the staff did review it. Ms. Thompson does not think this complaint should wait since there is no legal prohibition against hearing the complaint in light of the pending appeal.

Mr. Friedman stressed that this is not a normal situation since there are pending issues regarding the complaint. If this were in front of a court, the court would probably not want to take the complaint up until a final decision had been made regarding MHPC's status because it would not want to take time on an issue that may become moot because of a decision in another forum.

Mr. Cassidy stated that he would favor scheduling the complaint at a later time when the loose ends were more tied up.

Mr. Lindemann addressed the Commission as to whether this is the right time to hear his second complaint. His two major concerns are: 1) how to deal with a 1056-B filing when the reported expenditures far exceed contributions, and 2) the larger issue of new political public relation firms operating under the guise of public policy groups. Mr. Lindemann thought that MHPC should voluntarily disclose all its financial activity in the same way that Democracy Maine had voluntarily disclosed its financial activity on a PAC report as a part of its response to a complaint brought against it by Roy Lenardson. Mr. Lindemann said that the Commission tabled the complaint against Democracy Maine (March 9, 2007 meeting) after it had considered the complaint and thought that the same should be done in this case.

Mr. Lindemann addressed two procedural issues regarding this matter brought up in Mr. Billings' response. First, he believes that this matter is worth pursuing. The Commission has the authority to conduct an investigation if there are sufficient grounds for believing that a violation may have occurred. Mr. Lindemann said that the materials he has presented the Commission more than sufficiently state the grounds for an investigation. Second, Mr. Lindemann said that Mr. Billings asked that the complaint be summarily dismissed. However, Mr. Lindemann stated that Mr. Billings has not provided any sworn statement to substantiate his request for a summary dismissal.

He feels that it would have been appropriate for MHPC to ask for a stay for filing the 1056-B report pending the appeal back in January; however, it did not. It accepted the Commission's determination that it had to file the report and filed one. The 1056-B filing itself is separate and apart from the appeal. For example, if there were material false statements in the report, that would be a separate violation that would not be dependent on the Superior Court's ruling. He believes the fact finding should go forward and stop short of a final determination until the court decision.

Mr. Billings addressed the Commission. He expressed concern with the amount of time his client, MHPC, has already had to put into this issue and this second complaint today will just add more time to process. If there is going to be a fact finding investigation, Mr. Billings believes it should be done once, in accordance with the court's direction. If the complaint were unrelated and a separate factual matter, it would be justified to investigate further. He agreed that the Commission has the discretion to decide how it should proceed. He noted that a similar complaint against the AARP had been tabled pending resolution of the court case. In response to Mr. Lindemann's point about the stay, Mr. Billings noted that since MHPC had decided not to appeal the Commission's earlier ruling, it had no basis to request a stay.

Ms. Thompson stated that she thought the Commission should hear the substantive issues presented in the complaint and not delay because of pending Superior Court case.

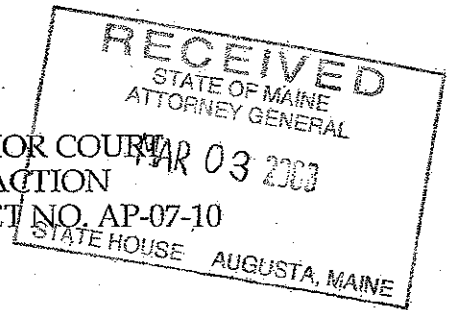
Mr. Cassidy made a motion to reschedule this complaint until after the Superior Court decision; Mr. Friedman seconded. The motion passed 2-1, Ms. Thompson opposed.

Mr. Friedman stated that the vote to delay does not cast any doubt on the validity of the complaint. The complaint is worthy of hearing, but the Commission needs to be concerned with administrative economy. The Commission will look at every aspect of the complaint when the time is right.

Ms. Ginn Marvin took the Chair at the conclusion of this item and stated that items would be taken out of order to prevent parties from having to wait longer.

STATE OF MAINE  
KENNEBEC, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-07-10



CARL LINDEMANN,

Petitioner

v.

DECISION AND ORDER

MAINE COMMISSION ON  
GOVERNMENT ETHICS &  
ELECTION PRACTICES,

Respondent

This M.R. Civ. P. 80C petition for judicial review results from the petitioner's request that the respondent, the Maine Commission on Governmental Ethics & Election Practices (Commission) investigate the conduct of the Maine Heritage Policy Center (MHPC) with regard to the statewide referendum campaign to enact a Taxpayer Bill of Rights (TABOR).

In October 2006, in a letter faxed to the Commission, the petitioner requested an investigation because he believed that the MHPC had been heavily involved in supporting passage of TABOR but had failed to file disclosure forms pursuant to 21-A M.R.S.A. § 1056-B or register as a political action committee pursuant to 21-A M.R.S.A. § 1053. (R. 1.) On October 20, 2006, the Commission considered the request, heard presentations from petitioner, counsel for the MHPC, and the executive director of Democracy, Maine, and tabled the matter for further consideration the following week. (R. 2 at 3-23; 3 at 24-26.) Counsel for the MHPC asserted that it had not solicited or received contributions specifically targeted to influence the outcome of TABOR. (R. 6.)

The Commission determined from the information presented that the MHPC did not meet the definition of a political action committee, but that further research was necessary regarding whether the MHPC should be required to file a § 1056-B report. (R. 8 at 8, 9.)<sup>1</sup>

The petitioner sent a letter to the Commission and argued that it had reached the wrong conclusion with regard to the MHPC's status as a political action committee and submitted additional information. (R. 12 at 2-6 and attachments.) The Commission confirmed its conclusion that the MHPC was not a political action committee but that the MHPC was required to file a financial report under 21-A M.R.S.A. § 1056-B because evidence confirmed that it had raised or spent more than \$1,500 to promote, initiate, or influence TABOR. (R. 22; 36 at 219-221; 37.) A motion to conduct further investigation failed by a 2-2 vote. (R. 36 at 238-239.) A motion to determine that the MHPC was not a political action committee passed by a 3-1 vote. (R. 36 at 239-240.) The Commission voted unanimously to require the MHPC to file a § 1056-B report within 30 days. (R. 36 at 240-241.) This decision was memorialized by letter on December 22, 2006. (R. 37.)

The petitioner argues that the Commission acted arbitrarily and capriciously, abused its discretion, committed errors of law and/or was affected by bias in a number of ways. Because the petitioner lacks standing to challenge the enforcement actions of the Commission, the petitioner's various arguments are not addressed and the petition is dismissed.

Maine's Constitution contains no "case or controversy" requirement for standing. Roop v. City of Belfast, 2007 ME 32, ¶ 7, 915 A.2d 966, 968. Maine's standing requirement is thus prudential rather than constitutional and limits access to the courts

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<sup>1</sup> The Commission also solicited the opinions of several non-profit groups. See (R. 10, 15, 16, 17, 20, 36 at 180-200 and 201-205.)

to “those best suited to assert a particular claim.” *Id.* (quoting Halfway House, Inc. v. City of Portland, 670 A.2d 1377, 1380 (Me. 1996)). In applying the standing doctrine, “[t]here is no set formula for determining standing. The judicial doctrine of standing ‘has been applied in varying contexts causing it to have a plurality of meanings.’” *Id.* (quoting Walsh v. City of Brewer, 315 A.2d 200, 205 (Me. 1974)).

Rule 80C entitles “any person who is aggrieved by final agency action” to judicial review in the Superior Court. M.R. Civ. P. 80C; 5 M.R.S.A. § 11001. The Law Court has determined that standing to obtain judicial review of an administrative action requires demonstration of a particular injury from the action. Storer v. Department of Environmental Protection, 656 A.2d 1191, 1192 (Me. 1995). “The agency’s action must actually operate prejudicially and directly upon a party’s property, pecuniary or personal rights.” *Id.* The harm must be “distinct from the harm experienced by the public at large” and not one “suffered by all the citizens of the State.” Ricci v. Superintendent, Bureau of Banking, 485 A.2d 645, 647 (Me. 1984).

The petitioner claims that the Commission’s decision deprived citizens of “information vital to the electoral process and to the choices faced by voters in an election.” (Pet.’s Rep. Br. at 5.) He argues that this falls within the “zone of interests” sought to be protected by the pertinent election laws and that the alleged injury is sufficient to establish his standing. *Id.* at 3; see Federal Election Commission v. Akins, 524 U.S. 11 (1998).

In Akins, the Court interpreted the provision of remedies for aggrieved parties in the Federal Election Campaign Act of 1971 (FECA). The Court found that the failure to obtain information fell within the “zone of interests” protected by FECA. *Id.* at 19-20. FECA provides that “any person who believes a violation of this Act . . . has occurred, may file a complaint with the Commission.” Akins, 524 U.S. at 19 (citing 2 U.S.C. §

437g(a)(1)). The petitioner argues that this language is parallel to the provision of section 1003(2): "[a] person may apply in writing to the commission requesting an investigation concerning the registration . . . and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee." 21-A M.R.S.A. §1003(2). The petitioner argues further that the language in FECA, "any party aggrieved by an order of the Commission dismissing a complaint filed by such party . . . may file a petition' in district court seeking review of that dismissal" is parallel to the language in the Maine Administrative Procedure Act, "any person who is aggrieved by final agency action shall be entitled to judicial review thereof". See Akins, 524 U.S. at 19 (citing 2 U.S.C. §437g(8)(A)); 5 M.R.S.A. § 11001(1).

In Akins, the FEC argued that the petitioners did not have standing because agency enforcement actions are "an area generally not subject to judicial review." Akins, 524 U.S. at 26. The Court agreed that agency enforcement decisions are traditionally committed to agency discretion and concluded that Congress did not intend to alter that tradition by enacting the APA. Id. (quoting Heckler v. Chaney, 470 U.S. 821, 832 (1985)). The Court determined, however, that unlike the APA, FECA explicitly indicated the contrary with regard to judicial review. Id.<sup>2</sup> FECA allows any party aggrieved by the FEC's dismissal of a complaint to seek review in federal district court. Id. at 19. The Court found that "nothing in the Act that suggests Congress

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<sup>2</sup> This essential distinction between the APA and FECA is also noted by the dissenting justice who believed that this distinguishing provision of FECA rendered it unconstitutional. Akins, 524 U.S. at 29-30 (Scalia, J., dissenting) ("The provision of law at issue in this case is an extraordinary one, conferring upon a private person the ability to bring an Executive agency into court to compel its enforcement of the law against a third party. Despite its liberality, the Administrative Procedure Act does not allow such suits, since enforcement action is traditionally deemed 'committed to agency discretion by law.'").



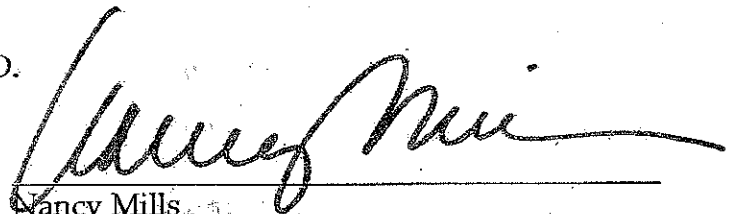
intended to exclude voters from the benefits of these provisions, or otherwise to restrict standing". Id. at 19-20.

None of the statutes relied on by the petitioner explicitly indicates an intent to alter the traditional discretion given to agency enforcement actions in a way similar to FECA. See 21-A M.R.S.A. § 1001, et seq.; 5 M.R.S.A. § 11001, et seq. The petitioner has expressed only a generalized injury indistinct from any injury to the public at large and as a result has failed to satisfy the "threshold issue" of standing. Ricci, 485 A.2d at 647.<sup>3</sup>

The entry is

The Petition is DISMISSED.

Date: February 26, 2008

  
Nancy Mills  
Justice, Superior Court

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<sup>3</sup> The petitioner dedicates a significant part of his reply brief to a discussion of public policy considerations that support granting him standing. The FECA, unlike Maine's election laws, requires judicial review of claims that traditionally would have been committed to agency discretion. Akins, 524 U.S. at 26.

# Carl Lindemann

P.O. Box 171  
Portland, Maine 04112

Phone 207-774-1936  
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March 18, 2008

Dear Executive Director Wayne,

Unfortunately, this is the busiest time of the year in my business, and I will not be able to attend in person on the 31st. However, this should not preclude the resolution of procedural matters at that session. I have alerted you to these before and significant work has been done on them already. Therefore I request that the following be included on the agenda for the March meeting so the case can move forward, if appropriate, at the April meeting.

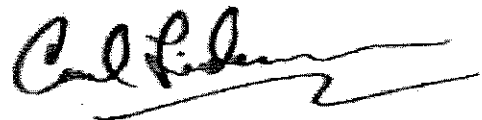
1. I request that the Commission determine by formal vote whether the Commission is the appropriate venue for this case about a fellow Commissioner. If it is determined that the Commission is not the proper venue due to the conflict of interest, I request that the Commission cede its jurisdiction here and take steps to refer it to an appropriate venue. The Commission heard these arguments last month and had a chance to question me in person, but did not move forward on this issue. Unfortunately, Mr. Billings and Assistant Attorney Gardiner were not present and may wish to have the opportunity to participate. I can be available by teleconference, and will have a summation/follow-up comments for review soon. All parties may review the recording and other materials of the meeting. I am not sure if Mr. Billings received Ms. Gardiner's statement or my (unanswered) follow-up questions. They are attached here.

2. Should the Commission decide it is appropriate for it to investigate and adjudicate a case about a fellow Commissioner, then I request that the Commission determine by formal vote whether the proceedings go forward under oath. As you will recall, when this case was first scheduled, I provided you significant evidence that demonstrated MHPC's inaccuracy in its statements. Mr. Billings did not challenge this evidence undermining his credibility as a fact witness. I have since gathered additional factual inaccuracies in MHPC's oral and written testimony to the Commission. I will provide this expanded catalog as soon as possible so that, if necessary, the Commissioners can come to a formal determination on this matter.

If 1 & 2 are settled, then it may be worth addressing whatever ancillary issues Mr. Billings may have raised in his discussions with you.

Also, please be advised that additional material evidence has come out in my own investigation of these matters that will be of interest. I would prefer not to make this public until the venue issue is resolved. If at the March meeting the Commission decides it is appropriate to hear the case, I do not believe it would give proper time if MHPC and the Commissioners receive, review and consider this evidence during that same session. In terms of your agenda, once the above matters are settled, then it may be appropriate to schedule the case for the April meeting where this new evidence could be reviewed beforehand.

Sincerely,



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**MARDEN, DUBORD,  
BERNIER & STEVENS**

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March 21, 2008

Jonathan Wayne, Executive Director  
State of Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Carl Lindemann's March 5, 2007 Complaint**

Dear Jonathan:

I am writing in response to your letter of March 12, 2008 requesting that I submit any additional materials that I believe the Commissioners need by this date. I respectfully request that this letter be provided to the Commissioners, along with a copy of the minutes of the Commission's meeting of May 14, 2007, which was the meeting when this matter was last considered by the Commission.

**The matter should remain tabled**

On behalf of the Maine Heritage Policy Center ("MHPC"), I request that Mr. Lindemann's complaint of March 5, 2007 remain tabled until the courts complete consideration Mr. Lindemann's appeal of the Commission's December 20, 2006 decision on his first complaint against MHPC. On March 14, 2008, Mr. Lindemann appealed the Superior Court's decision dismissing his appeal of the Commission's December 20, 2006 decision. The issues raised in the notice of appeal filed on behalf of Mr. Lindemann will now be considered by the Law Court.

It should be noted that one of the arguments included in Mr. Lindemann's brief to the Superior Court was that the Commission's investigation of the first complaint was not conducted properly and was affected by bias. He asserts that the Commission did not conduct a full investigation and that the Commission acted arbitrarily and capriciously in acting as it did. With those issues still potentially to be considered by the courts, and in light of the similar procedural issues now raised by Mr. Lindemann in regards to his second complaint, it would not be wise for the Commission to move forward with an investigation when the procedures that the Commission has used regularly to consider such matters are still under question in the courts.

With the appeal of Mr. Lindemann's first complaint remaining before the courts, the rational for the Commission's decision to table the second complaint is as valid today as it

was when the Commission tabled the matter on May 14, 2007. Delaying further consideration of the matter until the courts complete their work will allow the Commission to have the full benefit of the courts' consideration of the related matter and will reduce the burden placed on the Commission, the Commission's staff, and MHPC by ensuring that the complaint will only need to be considered once by the Commission.

**Mr. Lindemann's March 18, 2008 correspondence**

In a letter dated March 18, 2008, Mr. Lindemann requests that the Commission determine by a formal vote "whether the Commission is the appropriate venue for this case about a fellow Commissioner." He goes on to suggest that the Commission "cede its jurisdiction here and take steps to refer it to an appropriate venue."

Mr. Lindemann's complaint of March 5, 2007 concerning MHPC's 1056-B filing is a complaint against an organization - MHPC. Mr. Lindemann argues that his complaint is effectively a complaint against a Commissioner due to then Commissioner Jean Ginn Marvin's role as Treasurer of MHPC. It should be noted that the report was not signed by Ms. Marvin and no evidence has been offered to suggest that she played any role in its preparation or was involved with the contributions or expenditures detailed in the report.

Even if one is to accept the suggestion that Mr. Lindemann's complaint is effectively a complaint against Ms. Marvin, it is not now a complaint "about a fellow Commissioner" because Ms. Marvin is no longer a member of the Commission. Any concerns about a potential conflict of interest should have been eliminated by Ms. Marvin leaving the Commission.

It is also significant to note that two of the current Commissioners were not members of the Commission when Ms. Marvin was a member. Three of the current Commissioners were not members of the Commission when the Commission considered Mr. Lindemann's first complaint against MHPC. These changes in the Commission's membership should eliminate any concerns about the ability of the Commission to fairly consider this matter.

Maine law gives the Commission the responsibility to "administer and investigate any violations of the requirements for campaign reports and campaign financing." 1 M.R.S.A. §1008. The law provides no process for the Commission to "cede its jurisdiction" regarding Mr. Lindemann's complaint. If Mr. Lindemann wants the complaint to be heard, the only venue for initial review of the complaint is before the Commission.

If Mr. Lindemann wishes to request that any specific Commissioner recuse themselves from consideration of his March 5, 2007 complaint, he should make such a request and state the specific reasons that he believes that the Commissioner is biased or otherwise incapable of fairly considering the complaint.

Even if both the Commissioners who participated in the consideration of Mr. Lindemann's previous complaint against MHPC were to recuse themselves that would leave three Commissioners who were not members of the Commission at that time when the prior

matter was heard who could hear the second complaint. Even if one were to accept the suggestion that the Commission's proceedings regarding Mr. Lindemann's first complaint were tainted by Ms. Marvin's membership on the Commission that should have no impact on the ability of Commissioners Marsano, Shiah, and Youngblood to fairly hear the second complaint.

I also take issue with Mr. Lindemann suggestion that I have appeared as a fact witness before the Commission regarding these matters. I have appeared before the Commission as an attorney for MHPC. As is common in administrative proceedings, I have presented summaries of factual information that has been provided to me and have made arguments based on information provided by my client. This does not make me a fact witness.

### **A Preliminary Determination is Required Before Investigation May Proceed**

In his letter of March 5, 2007, Mr. Lindemann requests that the Commission investigate whether the 1056-B filing made by MHPC is complete and accurate. When the Commission decides that it is the appropriate time to consider Mr. Lindemann's request, it must make a preliminary determination before an investigation may proceed.

21-A M.R.S.A. §1003 governs the Commission's consideration of requests for investigations:

*A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.*

This statute requires the Commission to make a qualitative assessment of the request for an investigation. More than a mere allegation or potential for a violation is required before an investigation is ordered. The Commission should only begin an investigation if the person requesting an investigation has come forward with sufficient grounds to convince the Commission that a violation may have occurred.

This determination required by the statute is important to protect parties from the burdens imposed by unnecessary investigations. It is also a protection from someone using the Commission to harass their political opponents. Mr. Lindemann has offered no evidence to support his claim that MHPC's §1056(B) filing is incomplete. His complaint is based on his allegations concerning the veracity of statements by representatives of MHPC and his analysis of press releases. These allegations and theories fall well short of meeting his burden to provide sufficient grounds for believing that a violation may have occurred.

Mr. Lindemann also suggests that the Commission should believe that MHPC's 1056-B filing is incomplete because it lists more expenditures than contributions. Below is a

summary of organizations that filed 1056-B reports in 2006 due to their activities in opposition to the Taxpayer's Bill Of Rights ("TABOR"). As you can see, it is not unusual for 1056-B filers to list more expenditures than contributions. AARP listed \$295,558.00 in expenditures and no contributions. If a significant difference between contributions and expenditures provides sufficient grounds to believe that a 1056-B filer has committed a violation then investigations should be opened concerning AARP and the other organizations listed below whose TABOR related expenditures significantly exceeded their TABOR related contributions.

<b><u>2006 1056-B Filings of those opposed to TABOR</u></b>	<b><u>Contributions</u></b>	<b><u>Expenditures</u></b>
AARP	\$ -	\$ 295,558.00
Center on Budget & Policy Priorities	\$ -	\$ 28,221.10
Katahdin Institute	\$ 10,000.00	\$ 7,576.22
Maine Association of Nonprofits	\$ -	\$ 4,394.81
Maine Center for Economic Policy	\$ 1,000.00	\$ 13,404.55
Maine Equal Justice Partners	\$ -	\$ 5,571.48
Maine People's Alliance	\$ 11,171.00	\$ 20,423.29
Maine People's Resource Center	\$ 15,200.00	\$ 13,977.34
Maine Women's Lobby	\$ -	\$ 13,336.10
<b>TOTAL</b>	<b>\$ 37,371.00</b>	<b>\$ 402,462.89</b>

In his March 18, 2008 letter, Mr. Lindemann also requests that the Commission determine whether or not any proceedings relating to the investigation would go forward under oath. Even if the Commission decides to begin an investigation at this time, it is premature to determine whether or not testimony of any kind will be necessary. As you know, the Commission staff often conducts investigations into matters which are ultimately concluded without any testimony being provided to the Commission.

#### **Your May 9, 2007 Memo**

In your memo dated May 9, 2007, you attempt to interpret §1056-B and try to determine how the statute should apply to MHPC's 1056-B report and Mr. Lindemann's complaint. You suggest that the whether MHPC's report is complete could turn on whether reporting of contributions is triggered by the contributor's intent or the recipient's intent. You go on to suggest that one interpretation of the statute could require reporting based on the contributor's purpose in making the contribution. This is contrary to the plain language of the statute.

Section 1056-B requires reporting of contributions by any person "who solicits and receives contributions . . . for the purpose of initiating, promoting, defeating or influencing in any way a ballot question." This language establishes that reporting is based on the purpose of the person that solicits and receives the contribution, not the purpose of the person making the contribution. As noted in your memo, the Commission received testimony from then MHPC President William Becker that MHPC solicited and received contributions during 2006 to support MHPC's "overall mission" and its "ongoing work on spending limits." He also noted that no funds were segregated for TABOR related activities and no activities were tied to or dependent upon contributions. It is also significant that MHPC returned a large

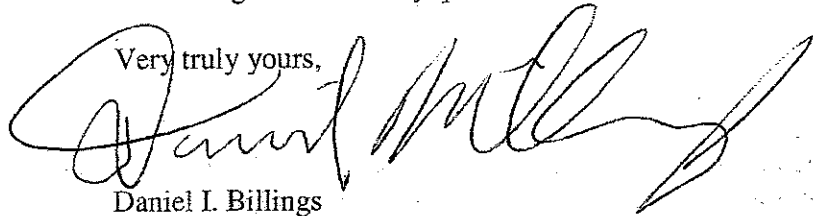
contribution that it determined was intended for the pro-TABOR campaign. This action supports the conclusion that MHPC did not intend to solicit or receive contributions for the purpose of promoting or influencing the vote on the ballot question.

The discussion in your memo concerning Mr. Lindemann's complaints regarding MHPC expenditure reporting illustrates well the problems with his arguments. Mr. Lindemann does not know MHPC's total budget in 2006 so his alleged analysis based on press releases is sophistry. Unless Mr. Lindemann can come forward with examples of specific expenditures by MHPC that have not been reported, he has not met his burden of showing that there are sufficient grounds for believing that a violation in regards to reporting of expenditures has occurred.

### Conclusion

I appreciate the opportunity to present this additional information to the Commission. I will be in attendance at the March 31<sup>st</sup> meeting to address any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel I. Billings", written over a horizontal line.

Daniel I. Billings

# Carl Lindemann

P.O. Box 171  
Portland, Maine 04112

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Phone 207-774-1936

Email Carl@cyberscene.com

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333

March 21, 2008

Dear Executive Director Wayne,

As promised in my initial response earlier this week to your letter of March 12, 2008, please include the following as the Commission moves forward in addressing my March 5, 2007 request for an investigation into the accuracy and completeness of Maine Heritage Policy Center's 1056-B filing. These include:

1. Previous documents and additional comments to support my request that the Commission determine whether it is the appropriate venue for this complaint. Also, I include a follow-up on questions raised at the Commission's last session under "other business." This is contained in a sizable (91 page) archive of materials attached.
2. Materials to support my request that, if the Commission does decide it is the appropriate venue, then the proceedings should go forward under oath. Factually inaccurate statements made by MHPC's representatives in previous testimony to the Commission raise fundamental doubts about the reliability of Mr. Billings and his client as fact-witnesses. The Commission should respond when witnesses have a demonstrable history of providing inaccurate testimony.

In my May 9, 2007 e-mail (included in pgs 49-50 of Agenda Item #5 for May 14, 2007), I show that a core claim by MHPC, that it had not expressly advocated for the Taxpayer Bill of Rights ("TABOR") ballot initiative, is not factually accurate. Mr. William Becker and MHPC attorney Dan Billings asserted this inaccurate claim on at least six occasions each. Pages 54-55 in the agenda item compare a slide from an MHPC "TABOR" presentation with a flyer from the proponent PAC. MHPC utilized the PAC's slogan in the campaign and so had expressly advocated. I also provided an additional instance where MHPC's Becker also used the campaign slogan to expressly advocate on WGAN-AM on October 30, 2006. This is of particular interest because of Becker's factually inaccurate explanation of his statement made the next day under questioning at the Commission. The transcript is found on pgs 57-60 of Agenda Item #5.

Another instance of MHPC's factually inaccurate testimony is Becker's claim also made at the October 31<sup>st</sup> 2006 meeting that his organization had not expressly advocated for LD 2075, the pre-TABOR bill before it became a ballot initiative. "We don't take any pro or con stance on any issue," he testified.

On December 8<sup>th</sup>, 2006, Executive Director Wayne received a voicemail from Commissioner Mavoureen Thompson requesting that the staff seek out legislative testimony to fact-check



Becker's statements. The staff discovered that Mr. Becker's testimony was not factually accurate, as he stated in a memo of December 8, 2006:

At the hearing, Bill Becker testified for the Maine Heritage Policy Center (MHPC). The MHPC testified in support of LD 2075 (the MHPC thanked the committee for the opportunity to testify in "full support" of the bill). When Mr. Becker signed up as the second witness, he placed a check-mark in the proponent column...

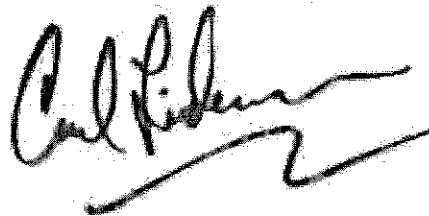
There are other examples of Mr. Billings and Mr. Becker's factual inaccuracies in testimony to the Commission. I would be happy to provide additional examples if these are insufficient to show the need for sworn testimony should the Commission decide to proceed with this follow-up complaint.

Finally, setting aside these procedural concerns for a moment, I would like to address a statement in your March 12 letter:

At that meeting, I will be suggesting to the Commission members that they decide whether to authorize the staff to initiate an investigation.

During the May 14<sup>th</sup> session last year, Commission Chair Friedman had acknowledged the "validity" of the complaint – i.e. that I had met the statutory requirement for such an investigation. So, if I understand the Commission's statutory responsibilities correctly, the question is not if this will be investigated and adjudicated, but when. Please clarify your comments in this light.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Friedman", with a long, sweeping horizontal line underneath.

## 1. Issues with the Commission investigating a Commissioner

This issue should be self-evident, but a fuller explication of this is contained in the documents submitted to you on January 31, your reply, and the clarification sent on February 4. For completeness, I also include the cover letter for when these documents were forwarded directly to the Commissioners. Please include these in the packet for the agenda item.

Commissioner Marsano expressed special interest in the matter of Ms. Ginn Marvin's failure to disclose her board membership on a political committee when she candidated for the Ethics Commission. I include that archive of material here as well. Of special interest here is the telling response of the Commission and staff to these revelations.

I have also included the news report about Ms. Ginn Marvin's failure to report published in the Portland Press Herald. This is noteworthy because of Assistant Attorney General Gardiner's highly prejudicial summary conclusions later echoed by Executive Director Wayne at the July 16<sup>th</sup> meeting of the Commission:

The Maine Attorney General's Office determined that Ginn Marvin's role with the think tank does not bar her from serving on the ethics commission, because the organization does not appear to fit the legal definition of a "political committee."

Assistant Attorney General Gardiner is, in fact, the source of this statement, and can confirm that fact for the Commission if necessary. Since, I have provided the Executive Director and the Assistant Attorney General ample proof that MHPC does fit the "legal definition of a 'political committee,' and their failure to respond to that has been telling. It is interesting to note that, since, the Executive Director has attempted to narrow the definition of what constitutes a "political committee."

Again, these examples of questionable conduct underscore concerns about the Executive Director and Assistant Attorney General's neutrality in any investigation related to Commission Chair Ginn Marvin. Why is her conduct such a problem for them? It draws attention to the charge that the Commission was improperly constituted with a Commissioner serving as an officer of a political committee. If this were ever to be investigated and adjudicated, it should bring significant professional embarrassment to the Executive Director, the Assistant Attorney General, and others.

### INDEX TO MATERIALS:

1. January 31 request and ancillary documents (sent directly to Commissioners on February 7, 2008). 19 pages.
2. July 2, 2007 complaint on Commission Chair Ginn Marvin's conduct and qualifications. 38 pages.
3. July 16, 2007 Portland Press Herald report on Ginn Marvin complaint. 2 pages.
4. August 6, 2007 challenge to Assistant Attorney General's "it just sits there" doctrine. 27 pages. Pages 12-27 examines whether MHPC is a "Political Committee."

# Carl Lindemann

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Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333

March 25, 2008

Dear Executive Director Wayne,

Having reviewed Mr. Billings letter of March 21, I request that the Commission take administrative notice of his prior testimony/statements in the initial case against his client Maine Heritage Policy Center. This is not about the truth of the matters asserted then, but to show that Billings is not a credible witness in the current matter.

Of particular interest is Mr. Billings letter of December 4, 2006 in response to a request for information from the Commission staff. His reply to question #4 quotes a mission statement purportedly drawn from MHPC's "application for 501(c)(3) status". However, this statement is not contained in the document he refers to, MHPC's Form 1023 filing with the IRS. I have attached these documents for your convenience.

Mr. Billings' past averments to the Commission have been shown to be false, at the very least due to his sloppiness or at worst due to deliberate misrepresentation. If he wants to make averments about material issues, the Commission, as a matter of prudence, should require that he make them as a sworn/signed affidavit since he is an unreliable fact-witness.

Given his purported concern over "administrative economy" to justify further delays of the proceedings against his client, it is important to consider the waste of time and effort caused by Mr. Billings and his client's past failure to provide accurate information to the Commission.

Sincerely,



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**MARDEN, DUBORD,  
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December 4, 2006

Jonathan Wayne, Executive Director  
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**RE: Maine Heritage Policy Center**

Dear Jonathan:

I am writing in response to your November 28<sup>th</sup> letter seeking more information from the Maine Heritage Policy Center ("MHPC") due to new allegations raised by Carl Lindemann. While I am happy to answer the questions raised in your letter, I need to first address the legal standard that the Commission must apply when considering the questions that have been raised concerning MHPC's activities related to the Maine Taxpayer Bill of Rights. Much of the difficulty in assessing the concerns that have been raised about MHPC has been the uncertainty that has resulted from the broad language contained in 21-A M.R.S.A. §1056-B and the court decisions indicating only a much narrower approach to regulation of speech regarding ballot measures can sustain constitutional scrutiny. Before considering the complaint against MHPC, the Commission should first decide how it will apply Maine law to all persons and entities engaging in speech regarding ballot measures in light of the court decisions in this area.

**Constitutional Standards**

21-A M.R.S.A. §1056-B requires that "[a]ny person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission." The statute further requires that the report filed "contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor." The statute includes very broad language, which if not applied narrowly, would, for the reasons explained below, not withstand a constitutional challenge.

In Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), the Supreme Court considered wide-ranging challenges to the Federal Election Campaigns Act ("FECA"). The Court described "[d]iscussion of public issues and debate on the qualifications of candidates [as] integral to the operation of the system of government established by our Constitution [to which] [t]he First Amendment affords the broadest protection." Id. at 14, 96 S.Ct. 612. The Court then recognized a "distinction between discussion of issues and candidates and advocacy of election or defeat of candidates." Id. at 42, 96 S.Ct. 612. To avoid problems of vagueness and overbreadth that would otherwise be presented by certain of FECA's provisions, the Court construed them to reach only communications "that expressly advocate the election or defeat of a clearly defined candidate." Id. at 80, 96 S.Ct. 612; See also Id. at 43-44, 96 S.Ct. 612. The Court restricted express advocacy, in turn, to communications utilizing imperative terms such as "vote for [or against]," "support," "defeat" or "reject." Id. at 44 n. 52, 96 S.Ct. 612.

While Buckley dealt with candidate elections, only in later cases did the Supreme Court deal with ballot measures that did not involve candidates for office. An examination of the Supreme Court's jurisprudence in the area is useful to the issues currently before the Commission.

In First National Bank of Boston v. Bellotti, 435 U.S. 765, 790, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978), the Supreme Court recognized that votes on ballot measures involve less risk of corruption that would justify state regulation than do candidate elections where there is concern to avoid a quid pro quo arrangement between a candidate and the contributor. "Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." Id. at 790, 98 S.Ct. 1407 (citations and footnote omitted).

In Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981), the Supreme Court struck down state limitations on money contributions to political committees supporting or opposing a ballot measure. In doing so, the Court observed that "[t]he integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed." Id. at 299-300, 102 S.Ct. 434.

In McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995), the Supreme Court held that "the principles enunciated in Buckley extend equally to issues-based elections" and made clear that exacting scrutiny applies to any state regulation of advocacy in noncandidate elections like referenda.

The Supreme Court's most recent pronouncement in this area of noncandidate elections is Buckley v. American Constitutional Law Foundation, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999) ("Buckley II"). That decision struck down a number of Colorado regulations concerning the state's petition process. In doing so, however, the Supreme Court said that it was legitimate for a state to require sponsors of ballot initiatives to disclose to the State the names of proponents of the petition and the amount being spent. Id. at 647-48. The Court approvingly identified that requirement as a way to inform voters of

"the source and amount of money spent by proponents to get a measure on the ballot." *Id.* at 647.

Though the Supreme Court cases in this area do not directly address whether a state can constitutionally require disclosure of contributions and expenditures that are spent on speech that does not expressly advocate the passage or defeat of a referendum question, the lower courts that have considered the issue have concluded that state regulation must be limited to express advocacy. In *Richey v. Tyson*, 120 F. Supp. 2d 1298, 1319 (D. Alabama 2000), the District Court held that the U.S. Constitution required that Alabama's Fair Campaign Practices Act, which contained broad language such as is contained in Maine law, must be read narrowly to confine the scope of its disclosure requirements to contributions and expenditures for the purpose of expressly advocating the passage or defeat of a referendum question. In *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1098-99 (9<sup>th</sup> Cir. 2003), the Court of Appeals held that a state court ruling limiting state regulation of candidate related ads to those containing express advocacy also applied to speech related to referendum questions.

A review of these cases leads to the conclusion that state regulation of speech regarding referendum questions is only constitutional if the regulation is limited to speech which expressly advocates the passage or defeat of a referendum question. With these cases in mind, the Commission should read Maine law narrowly as to only require reporting of contributions and expenditures which are used for speech which directly advocates the passage or defeat of a referendum question. Any other reading would impermissibly interfere with speech which is entitled to the broadest First Amendment protection.

It should also be noted that none of the policy concerns that continue to be debated regarding what expenditures should trigger matching funds to candidate under Maine's Clean Elections Act are relevant to this issue. There are no matching funds at stake that can be triggered in referendum campaigns and there are no contribution limits which are applicable to such campaigns.

If Maine law is read narrowly, as required by the U.S. Constitution, no reporting of any kind should be required by MHPC. A great deal of material concerning MHPC has been submitted to the Commission. To date, I have seen nothing which would indicate that MHPC spent any funds to expressly advocate the passage of the Maine Taxpayer Bill of Rights.

#### **Responses to Questions in November 28<sup>th</sup> letter**

In your letter, you asked four questions. Each question is addressed below:

- (1) *Has the MHPC received any funds from any source specifically to promote, initiate, or influence the TABOR initiative? If so, please state the total amount received. If an exact amount is not available by December 4, please provide an estimated amount for the time being.*

MHPC has not received any funds from any source specifically to promote, initiate, or influence the TABOR initiative. All contributions received are used to support the overall

operations and general mission of MHPC. No funds were specifically segregated or dedicated to activities related to the Maine Taxpayers Bill of Rights. No activities undertaken by MHPC related to the Maine Taxpayer Bill of Rights were contingent upon or the result of any funds received from any source.

As a result of this question, MHPC staff has reviewed all contributions received by the Center this year. Four contributions, including the contribution from Mr. Briney, were made along with correspondence or references on checks mentioning TABOR or MHPC's work related to TABOR. These four contributions total \$975, less than the \$1500 threshold requiring reporting under Maine law. It should be noted that these contributions were not treated any differently than any other contributions to MHPC and the funds were not dedicated to any activities related to the Maine Taxpayers Bill of Rights. It should be no surprise that some contributors may mention MHPC's TABOR related work, based on MHPC's activities as detailed in my letter of October 26<sup>th</sup>.

There were also two other contributions received where TABOR was referenced along with the contributions. In both cases, MHPC staff spoke to the donor and made sure the donor understood that contributions to MHPC would not be used as part of the campaign to pass TABOR and that all contributions received are used to support the overall operations and general mission of MHPC.

In October, MHPC received a \$3,000 contribution with "TABOR" in the memo. MHPC staff knew the donor personally, and communicated with the donor regarding the donor's intent. MHPC staff explained to the donor that MHPC's role was limited to research and education and that a separate, independent organization was running the initiative campaign and purchasing media, etc. Based on these discussions, the contributor asked that \$2500 be refunded, with \$500 retained by MHPC for their general operating research and analysis work. MHPC complied with the request.

Additionally, one other \$1,000 unsolicited donation was received in 2006 with a personal check that did not reference TABOR. However, on the inside of the donation envelope, a note "For TABOR!" was handwritten. MHPC staff called the donor and spoke with the donor about the nature of MHPC's work. It is the MHPC staff's belief that the donor was aware that the organization's work was not political, nor engaged in express advocacy – but rather that the donor's contribution was for general support of MHPC's role in strictly research and education efforts

(2) *Has the MHPC solicited any contributions or other funds in connection with the TABOR initiative?*

No. However, MHPC has mentioned its TABOR related work in its general fundraising activities. For example, the enclosed fundraising letter, marked as Exhibit A, mentions MHPC's work related to TABOR. It should be noted that though the letter is dated October 18<sup>th</sup>, it did not go out until after November 7th and no contributions were received as a result of the letter before November 7<sup>th</sup>. Also, the letter was only sent to existing MHPC members.

- (3) *Is the November 6 letter from Bill Becker a form letter used by the MHPC to thank donors for contributions or other funds given to promote TABOR?*

No. Enclosed, marked as Exhibit B, is a copy of the form letter used by MHPC to thank contributors. As you can see, changes were made to the regular form letter to recognize Mr. Briney's expressed interest in MHPC's work related to TABOR. It is MHPC's practice to alter the general form letter as a result of areas of interest mentioned by the donor.

- (4) *Was part of MHPC's mission in 2006 to promote TABOR, as stated in Mr. Becker's November 6 letter?*

The language contained in the November 6 letter was a result of changing the usual form letter which states "we will use [your donation] to advance our mission of promoting free markets and conservative public policy solutions that will benefit all people of Maine."

MHPC's mission, as stated on its application for 501(c)(3) status is:

*The Maine Heritage Policy Center is a research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise; limited, constitutional government; individual freedom; and traditional American values--all for the purpose of providing public policy solutions that benefit the people of Maine.*

*MHPC's staff pursues this mission by undertaking accurate and timely research and marketing these findings to its primary audience: the Maine Legislature, nonpartisan Legislative staff, the executive branch, the state's media, and the broad policy community. MHPC's products include publications, articles, conferences, and policy briefings.*

*The Maine Heritage Policy Center researches and formulates innovative and proven conservative public policy solutions for Maine in three general areas:*

*Economy/Taxation  
Education  
Health Care*

*Governed by an independent Board of Directors, The Maine Heritage Policy Center is a nonprofit, nonpartisan, tax-exempt organization. MHPC relies on the generous support from individuals, corporations, and foundations, and does not accept government funds or perform contract work.*

A more abbreviated version of MHPC's mission appears on its publications:

*The Maine Heritage Policy Center is a 501 (c) 3 nonprofit, nonpartisan research and educational organization based in Portland, Maine. The Center formulates and promotes free market, conservative public policies in the areas*



*of economic growth, fiscal matters, health care, and education – providing solutions that will benefit all the people of Maine. Contributions to MHPC are tax deductible to the extent allowed by law.*

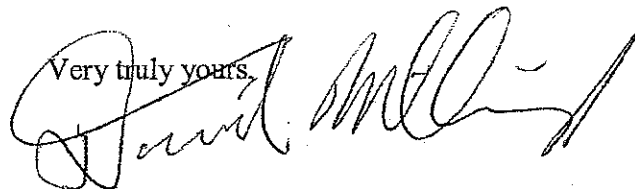
MHPC believes that its work related to the Maine Taxpayer Bill of Rights, which was detailed in my October 26<sup>th</sup> letter and in testimony to the Commission, is in keeping with this mission.

**Allegations contained in Carl Lindemann's November 27<sup>th</sup> letter**

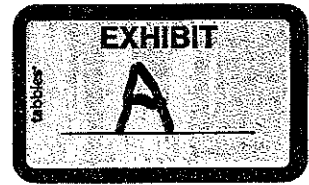
Mr. Lindemann's allegations of "criminality," "willful deceit," and "material false statements" are not worthy of a response. The alleged "new evidence" provided by Mr. Lindemann is dated after my letter of October 26<sup>th</sup> and after the October 31<sup>st</sup> Commission Meeting. Therefore, nothing contained in the documents is relevant to the facts as they existed on October 26<sup>th</sup> or October 31<sup>st</sup>. More importantly, for the reasons stated above, the documents do not substantively contradict the position previously advanced by MHPC.

Mr. Lindemann's complaints to the Commission are just one part of his long running campaign against MHPC. Previously, he has filed complaints against MHPC with the Internal Revenue Service which were dismissed. His more recent actions, which include what appears to be an attempt to entrap MHPC into accepting what he believes is an illegal contribution and written attacks against me, Bill Becker, Commission staff, and members of the Commission, go well beyond what should be considered acceptable behavior by someone appearing before the Commission. A good faith disagreement on the meaning of the law should not result in such personal attacks as part of a proceeding before a regulatory board. The Commission should also consider what could result if it takes action based on one party's apparent attempt to lure an opposing party into what the first party sees as a campaign finance violation.

I will be in attendance at the Commission's December 12<sup>th</sup> meeting, along with MHPC President and Chief Executive Officer Bill Becker. If I can be of assistance by providing additional information or answering additional questions before the meeting, please let me know.

Very truly yours,  


Daniel I. Billings  
e-mail: [dbillings@gwi.net](mailto:dbillings@gwi.net)



October 18, 2006

Dear :

The Maine Heritage Policy Center continues to educate Maine people on the value of a strong economy and the need for fundamental reforms in the way we operate our state. In addition to authoring THE TAXPAYER BILL OF RIGHTS, we've completed our latest publication, the *Maine Economic Atlas*. This comprehensive book provides an objective look at Maine at the municipal level, providing lawmakers, schools and the media with a tool with which to make informed policy decisions. The Atlas provides statistics on demographics, education, economics, health care and taxation and it's available for purchase by calling our office at 207-321-2550 or on our Web site at [www.mainepolicy.org](http://www.mainepolicy.org).

As the author of THE TAXPAYER BILL OF RIGHTS, we believe that this initiative provides a road map to jump-start Maine's economy. With only a few weeks until the election, we are in a fight for Maine's economic life. As you are aware, Maine has the highest property taxes and the highest state and local tax burden in the country. Our economy continues to struggle. In 2005, Maine was just one of two states to see a decline in economic activity, as reported by the Federal Reserve Bank of Boston. Louisiana, which was ravaged by hurricane Katrina, was the only other state to see a decline. It is more important than ever to educate Maine citizens about the challenges we currently face.

We understand that the economic pie is shrinking. A large part of the problem has been Maine's highest-in-the-nation tax burden, driven by out-of-control government spending. One way to address that problem is through an effective "Tax-and-Expenditure Limit" such as Maine's proposed TAXPAYER BILL OF RIGHTS. Such responsible public policy encourages Maine businesses to remain in the state and grow, thus creating more Maine jobs and higher incomes for Maine workers. With Maine's per capita tax burden growing 50% faster than the rate of inflation, we must act now and work to stop Maine's